

CA20N

EAB

-H26

EA-87-02



ENVIRONMENTAL ASSESSMENT BOARD



VOLUME: 176

DATE: Monday, January 22nd, 1990

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member


A. KOVEN, Member.

FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

**FARR &
ASSOCIATES
REPORTING INC.**

(416) 482-3277

2300 Yonge St., Suite 709, Toronto, Canada M4P 1E4



Digitized by the Internet Archive
in 2023 with funding from
University of Toronto

<https://archive.org/details/31761116524943>

HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER OF a Notice by the
Honourable Jim Bradley, Minister of the
Environment, requiring the Environmental
Assessment Board to hold a hearing with
respect to a Class Environmental
Assessment (No. NR-AA-30) of an
undertaking by the Ministry of Natural
Resources for the activity of timber
management on Crown Lands in Ontario.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Monday, January 22nd,
1990, commencing at 8:30 a.m.

VOLUME 176

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member

A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	
MS. C. BLASTORAH)	MINISTRY OF NATURAL
MS. K. MURPHY)	RESOURCES
MS. Y. HERSCHER)	
MR. B. CAMPBELL)	
MS. J. SEABORN)	MINISTRY OF ENVIRONMENT
MS. B. HARVIE)	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN)	ASSOCIATION and ONTARIO
MS. E. CRONK)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY)	ASSOCIATION
MR. H. TURKSTRA	ENVIRONMENTAL ASSESSMENT
	BOARD
MR. E. HANNA)	ONTARIO FEDERATION OF
DR. T. QUINNEY)	ANGLERS & HUNTERS
MR. D. HUNTER)	NISHNAWBE-ASKI NATION
MS. N. KLEER)	and WINDIGO TRIBAL COUNCIL
MR. J.F. CASTRILLI)	
MS. M. SWENARCHUK)	FORESTS FOR TOMORROW
MR. R. LINDGREN)	
MR. P. SANFORD)	KIMBERLY-CLARK OF CANADA
MS. L. NICHOLLS)	LIMITED and SPRUCE FALLS
MR. D. WOOD)	POWER & PAPER COMPANY
MR. D. MacDONALD	ONTARIO FEDERATION OF
	LABOUR
MR. R. COTTON	BOISE CASCADE OF CANADA
	LTD.
MR. Y. GERVAIS)	ONTARIO TRAPPERS
MR. R. BARNES)	ASSOCIATION
MR. R. EDWARDS)	NORTHERN ONTARIO TOURIST
MR. B. McKERCHER)	OUTFITTERS ASSOCIATION

APPEARANCES: (Cont'd)

MR. L. GREENSPOON)	NORTHWATCH
MS. B. LLOYD)	
MR. J.W. ERICKSON, Q.C.)	RED LAKE-EAR FALLS JOINT
MR. B. BABCOCK)	MUNICIPAL COMMITTEE
MR. D. SCOTT)	NORTHWESTERN ONTARIO
MR. J.S. TAYLOR)	ASSOCIATED CHAMBERS
	OF COMMERCE
MR. J.W. HARBELL)	GREAT LAKES FOREST
MR. S.M. MAKUCH)	
MR. J. EBBS	ONTARIO PROFESSIONAL
	FORESTERS ASSOCIATION
MR. D. KING	VENTURE TOURISM
	ASSOCIATION OF ONTARIO
MR. D. COLBORNE)	GRAND COUNCIL TREATY #3
MS. S.V. BAIR-MUIRHEAD)	
MR. R. REILLY	ONTARIO METIS &
	ABORIGINAL ASSOCIATION
MR. H. GRAHAM	CANADIAN INSTITUTE OF
	FORESTRY (CENTRAL
	ONTARIO SECTION)
MR. G.J. KINLIN	DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC	MINISTRY OF NORTHERN
	DEVELOPMENT & MINES
MR. M. COATES	ONTARIO FORESTRY
	ASSOCIATION
MR. P. ODORIZZI	BEARDMORE-LAKE NIPIGON
	WATCHDOG SOCIETY

(iii)

APPEARANCES: (Cont'd)

MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON
MR. C. BRUNETTA	NORTHWESTERN ONTARIO TOURISM ASSOCIATION

I N D E X O F P R O C E E D I N G S

<u>Witness:</u>	<u>Page No.</u>
<u>JOHN ALLIN,</u> <u>KENNETH ARMSON,</u> <u>DAVID EULER,</u> <u>ALBERT BISSCHOP,</u> <u>CAMERON CLARK,</u> <u>JOHN DUNCANSON, Resumed</u>	31140
Cross-Examination by Mr. Hanna	31140
Cross-Examination by Ms. Kleer	31278
Cross-Examination by Mr. Colborne	31352
 SCOPING SESSION	 31404

(v)

I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
1007	OFAH Interrogatory Nos. 1, 4-18, 21-26, 29 and 42. (Panel 17)	31139

1 ---Upon commencing at 8:35 a.m.

2 THE CHAIRMAN: Good morning. Be seated,
3 please.

4 Mr. Hanna, are you ready?

5 MR. HANNA: Yes, Mr. Chairman.

6 THE CHAIRMAN: Just before you start, I
7 just want to announce to counsel that a copy of the
8 Order the Board released yesterday has been sent out
9 from Toronto to everyone on the full-time parties list.
10 It is of better quality than the faxed copy that was
11 distributed. It remains the same.

12 I think there is one typographical error
13 that has been corrected that I requested Ms. Seaborn to
14 advise counsel of last week. It was noticed, I don't
15 know whether she did or not, one word had been
16 transposed in front of another that didn't make sense,
17 so it was changed. Other than that, the Order of
18 course remains the same.

19 Thank you. Mr. Hanna?

20 MR. HANNA: Mr. Chairman, I've indicated
21 to Ms. Devaul that depending how things go this morning
22 I may well not even take the whole morning and I
23 advised her so that she would let the other parties
24 know so they would be prepared to go when I am
25 finished.

1 THE CHAIRMAN: Well, we have done that, I
2 understand, and that Ms. Kleer is prepared to follow
3 you; however, she may only be two and a half hours.

4 We have instructed Ms. Devaul to contact
5 Mr. Colborne to see if he might be ready towards the
6 end of the day, should we reach him by that time. It
7 may not be possible to continue with Mr. Colborne at
8 the end of the day.

9 MR. HANNA: What I would like to do at
10 the start, part of my cross-examination will be
11 referring to interrogatories that have been submitted
12 on this panel. Some of the interrogatories have
13 already been submitted by the Ministry. Unfortunately,
14 I did not have the list of questions that they had
15 submitted at the time that this was prepared, so there
16 is some duplication in the package, but I think there
17 are new questions in it also.

18 So I would like to submit that, before we
19 begin, Mr. Chairman.

20 THE CHAIRMAN: Very well. Exhibit 1007.

21 MR. HANNA: (handed)

22 THE CHAIRMAN: Thank you.

23 MR. HANNA: Mr. Chairman, I will just
24 read in the interrogatories that this comprises. It is
25 Questions 1, 4 to 18, 21 to 26, and 29 and 42.

1 I may not be referring to all of those
2 today, but I felt it was better to put the whole
3 package in in the event that we would want to refer to
4 it at some point in the future.

5 ---EXHIBIT NO. 1007: OFAH Interrogatory Nos. 1, 4-18,
6 21-26, and 29, 42. (Panel 17)

7 MR. HANNA: I would like to first deal
8 with the 'alternatives to' analysis that's contained in
9 this panel.

10 Over the Christmas break I've had some
11 time to reflect on cross-examination. In my ongoing
12 evolution of trying to make this more efficient for the
13 Board, I am going to try a new approach here and see if
14 this may be of some benefit to you.

15 What I have tried to do is parce up my
16 cross-examination in smaller pieces and to try and
17 summarize each piece with one or two key questions that
18 it is structured around.

19 And the first matter that I want to look
20 at is what is an 'alternative to' in the context of
21 this evidence and, specifically, what definition was
22 used to distinguish between 'alternatives to' and
23 alternative methods in this analysis.

24 And the second principal question is:
25 Are the proposed 'alternatives to' actually

1 'alternatives to' or combinations of alternatives to
2 alternate methods.

3 I realize that has been discussed
4 somewhat in the evidence-in-chief, but I will try and
5 avoid duplication wherever I can.

6 JOHN ALLIN,
7 KENNETH ARMSON,
8 DAVID EULER,
9 ALBERT BISSCHOP,
10 CAMERON CLARK,
11 JOHN DUNCANSON, Resumed

12 CROSS-EXAMINATION BY MR. HANNA:

13 Q. Mr. Bisschop, I think these questions
14 will probably be directed to you.

15 Are you familiar with the differentiation
16 drawn between 'alternatives to' and alternative methods
17 that was presented at the southwestern and eastern
18 Ontario Hydro Plan Stage EAs by David Young and Judy
19 Simon of the EA Branch, who are now at the EA Branch of
20 the Ministry of the Environment?

21 MR. BISSCHOP: A. I can recall their
22 position generally, but I can't recall the exact
23 specifics of how they defined the difference.

24 Q. Did they not suggest that
25 'alternatives to' should represent, and the operative
word here I think is functionally, different
alternatives?

1 And to give you an example, I believe in
2 the Hydro case, if you had a nuclear and coal fired
3 generating options these would be considered
4 alternative methods; whereas, considering additional
5 regeneration capacity and energy conservation would be
6 'alternatives to'. Is that your understanding?

7 A. Yes.

8 Q. Do you know whether this definition
9 has or has not been accepted in other EA hearings, for
10 example, the recent SNC hearing?

11 A. I'm not familiar that it has or
12 hasn't, no.

13 Q. Do you agree with this definition of
14 'alternatives to'?

15 A. Yes, in the sense that it's one way
16 of explaining what is meant by the difference between
17 alternatives to and alternative methods. I think there
18 are probably various interpretations, which is probably
19 the reason for some of the difficulty that people have
20 dealing with this subject in environmental assessments.

21 Q. Do your proposed 'alternatives to'
22 meet this test?

23 A. We believe they do in the sense that
24 they are - I think to use the words that Mr. Young or
25 Ms. Simon had used - functionally different.

1 We have identified the null alternative
2 for the reasons that are common to any environmental
3 assessment as a base of comparison, if you will. We
4 think that alternatives B and C are functionally
5 different in the sense that the key element of their
6 definition is that there is no effort on the part of
7 man to renew the forest, we simply rely on nature to
8 renew the forest, and that's the basic functional
9 difference between alternatives B and C and timber
10 management itself.

11 Q. But --

12 THE CHAIRMAN: Excuse me. How do B and
13 C, if they do not include timber management -- put it
14 this way: If you have a difference between B and
15 timber management, the functional difference is one
16 includes intercession by man the other doesn't?

17 MR. BISSCHOP: That's correct.

18 THE CHAIRMAN: When you get to C you are
19 really looking at the same 'alternative to' in the
20 sense that there is no intercession by man, and
21 wouldn't the differences between B and C, or couldn't
22 they be categorized or characterized as being different
23 alternative methods of the same 'alternative to'?

24 MR. BISSCHOP: Yes, and I believe that's
25 the conclusion that we reached in this discussion last

1 week as well, Mr. Chairman.

2 MR. HANNA: Q. Would you agree that
3 recycling is functionally different to production of
4 virgin wood fiber?

5 MR. BISSCHOP: A. Yes.

6 Q. Would you agree that import of wood
7 is functionally different to production of virgin wood
8 fiber?

9 A. Yes.

10 Q. Would you agree that demand
11 management - and what I mean by that is more efficient
12 use of wood, reduced demand, substitution of products -
13 is a functionally different alternative to the
14 production of virgin wood fiber?

15 A. Yes, I would agree.

16 Q. Now, with respect to alternatives B
17 and C, the Chairman indicated that one might look at
18 that as being different and functionally different than
19 the preferred alternative is the lack of intercession,
20 human intercession; however, from a functional point of
21 view, are you still not basically doing the same thing;
22 and, that is, producing virgin wood fiber?

23 A. Yes, you are, but I guess I can only
24 say that there is -- the absence of intercession by man
25 is a key functional difference.

1 Q. With respect to the purpose of the
2 undertaking, at least as it's currently defined?

3 A. Sorry, would you repeat that, please?

4 Q. Certainly. With respect to the
5 current definition of the purpose of the undertaking,
6 which is to provide a predictable and continuous supply
7 of wood, are you not in both cases functionally doing
8 the same thing, supplying that wood through virgin
9 fiber?

10 A. To that I would agree, yes.

11 MR. HANNA: Mr. Chairman, I would like
12 now to look at two questions which are: Can we
13 reasonably conclude from the analysis presented that
14 the preferred alternative will be the same for all
15 forest management units, looking at now what the
16 implications of this are on a site-specific basis; and,
17 second, if we cannot arrive at that conclusion for
18 every forest management unit, what can we conclude as
19 as a result of the evidence of this panel that will
20 expedite the preparation and approval of timber
21 management plans in the future.

22 Q. Mr. Bisschop, do you have with you
23 the Class EA?

24 MR. BISSCHOP: A. Yes, I do.

25 Q. I am going to refer to page 14. That

1 is the main body of the Class EA not the formal
2 summary.

3 A. I have it.

4 Q. Now, in line 29, the second point
5 there, the second reason or justification for a Class
6 EA approach, it indicates that one of the reasons is
7 that the environmental effects are generally
8 predictable.

9 Are the effects referred to here net
10 effects? You are familiar with the term net effects?

11 A. Yes, I am. My own view is it really
12 doesn't make much difference. We can predict the
13 effects, we can predict what measures might be taken to
14 reduce those effects, therefore, we can predict the net
15 effects. So whether it is effects without mitigation
16 or net effects, I think the same point would still
17 apply.

18 Q. What is meant by predictable in this
19 context?

20 A. Predictable in the sense that, as we
21 have described in our evidence to date through
22 particularly the panels on the various activities, we
23 can describe in advance what the effects of timber
24 management operations would be.

25 We know the -- while there is some

1 uncertainty about subjects such as magnitude, we do
2 know the general hypotheses of cause and effect
3 relationships and, in that sense, there is
4 predictability.

5 Q. Now, on line 30, it makes reference
6 there to Chapter 11. Do you see that?

7 A. Yes.

8 Q. And I believe if we turn to page 59,
9 it is the beginning of Chapter 11 - excuse me, page
10 56. Now, I'm looking at the first paragraph there and
11 the second sentence says:

12 "These effects may be positive or
13 negative, short term or long term,
14 direct or indirect, temporary or
15 permanent, reversible or irreversible or
16 cumulative."

17 Can you tell me what type of impact is
18 left out?

19 A. I believe when we wrote that
20 statement we were certainly trying to be comprehensive.
21 I can't think of what's left out.

22 Q. So, in fact, you are saying that the
23 impacts could be predicted, you are saying virtually
24 anything can happen and in that way they are
25 predictable?

1 A. Yes, I think that's fair.

2 THE CHAIRMAN: But you can still identify
3 what the effect is? I mean, anything could happen
4 within those categories, but you are saying that you
5 can still predict which particular effect in terms of
6 those descriptors will happen and what it is.

7 MR. BISSCHOP: Yes. That would be
8 correct, Mr. Chairman, yes.

9 MR. HANNA: A. And that any set of those
10 might possibly occur within the area of the
11 undertaking?

12 MR. BISSCHOP: A. At any place, at any
13 particular time, yes.

14 Q. Is not the nature of the actual
15 impacts highly dependent on the site-specific
16 conditions under consideration?

17 A. Precisely, yes.

18 Q. I believe this is also reflected in
19 your witness statement, and I am referring as an
20 example to page 91, Table 1.

21 MS. BLASTORAH: Excuse me, which page?

22 MR. HANNA: 91. This is of the witness
23 statement, I'm sorry.

24 MR. BISSCHOP: Exhibit 984.

25 MR. HANNA: Q. Is not a reason that the

1 type of impact as being positive or negative and the
2 frequency at which this occurs reflecting the fact that
3 in order to make these determinations one would have to
4 look site-specifically; in some cases it can be
5 positive and in other cases it can be negative?

6 A. Yes, I believe that's the sort of
7 underlying understanding for this table. Mr. Allin can
8 speak better to it, but I think that's generally fair.

9 Q. I was just using that as an example.
10 I believe there are other examples like that in your
11 witness statement that talks about how it may go one
12 way or the other, depending on what actions are taken,
13 whatever?

14 A. That's correct.

15 Q. Now, given that the impacts with a
16 particular forest management unit are a function of the
17 site-specific conditions, is it not extremely difficult
18 without having examined the specific proposals for each
19 forest management unit to arrive at an aggregate
20 conclusion as to the advantages and disadvantages of
21 the various 'alternatives to'?

22 A. I think in the -- and, again, the
23 witnesses on the panel who produced the analysis for
24 the 'alternatives to' can speak better to it, but I
25 think that that consideration of the effects may be

1 positive in some cases and negative in others and
2 variations on that theme have been considered and
3 balanced in the analysis that we have undertaken to
4 come to the conclusions.

5 I think the very recognition - for
6 example, in this Table 1 on page 91 of the statement of
7 evidence - the very recognition of the positive and
8 negative was something that obviously had to be
9 considered in coming to the end conclusion on what is
10 the preferred alternative and how do the other
11 alternatives fair in comparison, but I think it's
12 something that had to be done and was done to come to a
13 conclusion. So, in that sense, I think it obviously
14 had to be possible to do that.

15 THE CHAIRMAN: Mr. Bisschop, was not the
16 evidence that where it could be either positive or
17 negative it was taken to be negative for the purposes
18 of the analysis?

19 Dr. Allin, was that not the case, for
20 instance, with Table 1?

21 DR. ALLIN: Yes, that's correct for Table
22 1, Mr. Chairman.

23 MR. BISSCHOP: I wasn't familiar with the
24 details, Mr. Chairman.

25 MR. HANNA: Q. I will come back to that

1 and I would just like to finish on this line, if I
2 could first; and, that is, if we accept then that in
3 order to arrive at the aggregate decision you must look
4 at the site-specific condition -- maybe the witnesses
5 who did the analysis of the site-specific conditions
6 across the 99 forest management units or whatever it
7 is, the alternatives that are possible for each one of
8 those, how they went about that task, because I find
9 that rather daunting to think that that would be done.
10 It certainly doesn't seem to be apparent in your
11 witness statement.

12 Who on the panel is responsible for that
13 and how was it done for each of these factors?

14 DR. EULER: A. I can tell you how we did
15 it for wildlife, if that would be helpful.

16 Q. That's one of the components.

17 A. We made an attempt as we were
18 thinking about this to try to look at the effects
19 species-by-species and that in itself became impossible
20 because it was just such a complicated task, that we
21 just came to the conclusion that we couldn't present
22 information that would be helpful and that the only
23 reasonable way to do it was to think of it in general
24 terms and in aggregates.

25 And so that's what we did, we presented

1 generalities that are not site-specific to any one
2 site, but we feel are true in their broadest sense over
3 ranges in the conditions.

4 Q. Dr. Euler, I don't believe you were
5 here for Dr. Baskerville's evidence, but he spoke to
6 some length about the need for, if I can use the
7 phrase, bottom up planning and he was speaking I
8 believe in that term, in that case primarily with
9 respect to looking at production possibilities in terms
10 of wood, but I think he said that it applied also to
11 other factors.

12 I think the essence of his thesis was:
13 You can't look at the aggregate without having looked
14 at disaggregate first. And maybe I didn't interpret
15 what you said properly, but it sounded to me like you
16 said we didn't look at disaggregate, we tried to look
17 at the aggregate and maybe the conclusion is at that
18 basis?

19 A. Yes, that's right.

20 Q. Mr. Bisschop -- well, perhaps we can
21 just finish. Are there any other members of the panel
22 that wish to elaborate on how they dealt with the fact
23 that many of these impacts are site-specific and that
24 we've got tremendous diversity and a mass of
25 information that needs to be considered to arrive at

1 these conclusions?

2 Does anyone want to elaborate on what Dr.
3 Euler has told us?

4 MR. CLARK: A. I'd perhaps just like to
5 speak a little bit about the approach that we used to
6 stakeholders because I think, in that particular
7 context, the issue that you are talking about is quite
8 relevant.

9 One of the things that I stressed
10 throughout my evidence has been that the effects can be
11 either positive or negative, for example. If you take
12 any number of effects like, for example, road access in
13 relationship to native people, it could be viewed as
14 positive by one group or negative to another and in the
15 absence of knowing the particular situation you are
16 dealing with, it may be difficult to predict what
17 applies.

18 I guess my answer to the question you are
19 asking is that we relied on the exercise of
20 professional judgment in the sense that we looked at
21 the particular effect, we looked at the range of
22 potential consequences, either positive or negative,
23 and then we said: Based on your experience in the area
24 of the undertaking - when I say 'yours' I am talking
25 about the people who were involved in making a

1 decision - in balance, would you say overall this was
2 either a positive or a negative effect.

3 And, as I say, so it really represented
4 the exercise of professional judgment based on the
5 experience people had in the area of the undertaking.

6 And so for commercial fishermen, if we
7 were dealing with an issue like road, what a particular
8 alternative would do to their opportunities, we would
9 say: Well, additional road access might put additional
10 pressure on the fishery but it would also provide
11 better access to commercial fishermen.

12 And then in our discussions on this
13 particular issue with staff elsewhere in the
14 organization, the overall judgment was made that road
15 access would be more beneficial in the sense that it
16 would allow them to get there more effectively and that
17 would be a more positive effect than the negative
18 effect of perhaps putting additional pressure on the
19 resource.

20 So I guess the point I'm making here is,
21 we recognize that they can be positive or negative as
22 an example and we put -- we tried to come up with what
23 I would call an informed judgment based on our
24 experience in the area of the undertaking.

25 Q. Mr. Clark, would you agree with me

1 that the only way that one could be certain as to the
2 accuracy and the liability of that judgment would be -
3 and I am speaking now as a member of the public,
4 someone outside of that circle of professional
5 judgment - would be to try and work through on a
6 case-by-case basis and match the actual with the
7 aggregate that those professionals have come to,
8 assuming until we will know for sure?

9 A. Oh, absolutely. I mean, you know, we
10 are in a sense engaged in what I would called informed
11 speculation. We think based on all we know about that
12 particular situation and what's happened in the past
13 that this is our best estimate of what would happen
14 throughout the area of the undertaking, but I guess the
15 proof is in the pudding.

16 Q. Mr. Bisschop, accepting for the time
17 being the proposition that it is only possible to
18 undertake a thorough evaluation of the advantages and
19 disadvantages in aggregate of the 'alternatives to' by
20 looking at each forest management unit in detail, could
21 this hearing still not be of considerable benefit in
22 providing the bases for such evaluations on a
23 case-by-case basis?

24 THE CHAIRMAN: What do you mean, could
25 this hearing be of benefit?

1 MR. HANNA: Well, perhaps I could say
2 that the Board's decision could be of benefit. Perhaps
3 I can step back here for a second, Mr. Chairman, and
4 perhaps tell you where I am going on this.

5 If the 'alternatives to' evaluation - let
6 me start again. It's my understanding one of the
7 reasons the 'alternatives to' evaluation was brought
8 forward was the hope that the 'alternatives to' would
9 not have to be reviewed each time a timber management
10 plan came forward. The Board would be able to say:
11 Okay, we've looked at 'alternatives to' in the generic
12 level and the preferred, timber management, is what
13 should apply in all cases.

14 Now, in the alternative, if the Board was
15 to conclude that to arrive at that analysis or that
16 overall assessment would require looking at each timber
17 management plan individually, it then could be argued
18 that there is no benefit in trying to deal with
19 'alternatives to' at the generic level because, in
20 essence, the only way you can make that decision is by
21 looking at it individuals.

22 Now, if that is the case, then is there a
23 way to streamline the process, the 'alternatives to'
24 evaluation, such that when we come to an individual
25 timber management plan, although the Board has not said

1 this 'alternative to', you don't look at 'alternatives
2 to', but when you do look at 'alternatives to', is
3 there a more efficient way rather than have to go
4 through the whole scoping process and how we are going
5 to evaluate 'alternatives to'. Can we do that?

6 THE CHAIRMAN: I don't know, maybe I am
7 missing something in the long run, I probably am, Mr.
8 Hanna.

9 But should the Board render a decision at
10 the end of the day: Approval, subject to conditions of
11 approval, et cetera; would we not, in effect, be saying
12 that the Board approves that the activities will be
13 carried out under a form of timber management as
14 opposed to one of the 'alternatives to' that was put
15 forward that the activities will be carried out without
16 a form of timber management; in other words, without
17 any active role played by the managers under, say, B or
18 C or any combination of B or C.

19 Doesn't that mean, though, that when you
20 get down to the individual timber management plan, the
21 producing of that plan, that the whole range within the
22 notion of timber management applies? In other words,
23 you may decide in a particular case to do nothing
24 vis-a-vis a specific activity, but that in that case is
25 your form of management; whereas in another case you

1 may be doing something quite different, such as
2 scarification or site preparation or a particular type
3 of harvest method, et cetera.

4 And what I am not following in what you
5 are saying is, is that if you are saying that this
6 hearing has arrived at a position or the evidence as a
7 result of this hearing indicates that you can't really
8 choose between the 'alternatives to' at a generic level
9 until you actually have a timber management plan up for
10 preparation, and doesn't that presuppose that we will
11 not have accepted the alternative of timber management?

12 MR. HANNA: I follow where you are going,
13 Mr. Chairman. I think there's two thrusts of what you
14 are saying there: One is the 'alternative to' in terms
15 of the planning process, and I think you have already
16 touched on this I think in some of your questions to
17 this panel. And I think the Board can come to the
18 determination, yes, the planning process is approved as
19 an undertaking in that sense.

20 THE CHAIRMAN: That there should be a
21 form of timber management as opposed to--

22 MR. HANNA: Planning.

23 THE CHAIRMAN: --a non-form of timber
24 management in planning--

25 MR. HANNA: Right.

1 THE CHAIRMAN: --when you go to prepare
2 any timber management plan for any unit.

3 MR. HANNA: And I understand that side of
4 it and that certainly makes sense to me in that sense.

5 The question that I am coming to now is:
6 Now that we have decided we have got a planning
7 process, we now have to withinin that planning process
8 look at 'alternatives to' in the functional sense,
9 functional sense of alternatives to the activity
10 itself.

11 THE CHAIRMAN: Why aren't those
12 alternative methods of carrying out the undertaking?

13 MR. HANNA: I will give you an example,
14 Mr. Chairman. I think I listed the three primary ones
15 that I see; and, that is, for example, recycling,
16 import of wood and demand management. And what you are
17 faced with is what combination of those in any
18 particular forest management unit are we going to deem
19 appropriate? To give you an example, we might --

20 THE CHAIRMAN: Well, why can't you have
21 timber management with respect to the activities and
22 include within that a recycling component, for
23 instance? In other words, what I am suggesting is, is
24 that I know we all use these phrases and terminology
25 'alternatives to' and alternative methods of carrying

1 it out, but I would suggest to you that perhaps those
2 terms are not completely mutually exclusive and cannot
3 necessarily be used only in the alternative.

4 In other words, you could have timber
5 management as the planning method chosen with respect
6 to the activities of, for instance, harvest or access
7 and then, as an alternative way of carrying that out,
8 you may also look to other things such as recycling or
9 all kinds of other elements that you could draw into
10 them.

11 MR. HANNA: Well, I agree with you in
12 practice. I think if you and I were sitting at a table
13 I am sure we could work it out in that sense. I am
14 concerned from the point of view of the wording of the
15 Act and what happens when we get to the timber
16 management plan level when we actually are preparing
17 that timber management plan, how will these other
18 factors end up on the table, how much recycling we do,
19 and how that is dealt with?

20 THE CHAIRMAN: It will end up on the
21 table probably through conditions of approval of some
22 kind. They will probably end up on the table to say
23 that when preparing a timber management plan the
24 proponent shall take into account recycling and perhaps
25 a methodology for taking that into account being

1 specified as well.

2 I can think of in the case of a waste
3 management plan for instance, as an example, that there
4 may also be included a percentage so as to say that in
5 a waste management plan there shall be recycling as a
6 component of 20 per cent of the waste management of the
7 waste in a particular geographic area.

8 MR. HANNA: Well, I don't think there is
9 any problem, we are saying the same thing, at least
10 what you are saying is what I want to hear in terms of
11 I want to make sure that that is a part of this
12 process.

13 I am just concerned that that may come
14 out -- that requires, at least in the concept that I
15 was coming from, an 'alternatives to' analysis at that
16 level in terms of not just whether we have recycling,
17 but how much recycling, and so that as long as that
18 step is in there and that those ways to satisfy that
19 demand will be in the planning process...

20 THE CHAIRMAN: Okay. But I think to get
21 to the position that you are afraid of, you are
22 assuming necessarily that recycling cannot be part of
23 timber management, it has to be either or; it has to be
24 timber management without recycling or some form of
25 recycling.

1 MR. HANNA: I think the reason I set out
2 those questions at the beginning in terms of production
3 of virgin fiber is that the ways to satisfy the demand
4 that I had seen was the virgin fiber, recycled fiber,
5 importing wood, or changing demand for the supply
6 itself.

7 Now, they can be rolled together and, to
8 use the analogy that you used, the waste management
9 master plan type of analogy, you would look at those
10 components at a gross level and then you would look at
11 the specific level they would then be taken into
12 account at that point. So I see...

13 THE CHAIRMAN: Let's ask Mr. Bisschop
14 what he feels in terms of the exclusivity of the two
15 concepts. Can you have timber management which would
16 include a component of say recycling, Mr. Bisschop?

17 MR. BISSCHOP: I think, Mr. Chairman,
18 although we probably have not explicitly said it, we
19 see it in very much the same light as you have. For
20 example, I can think at a level of a forest management
21 unit where we have to address the question to meet the
22 demand of a mill on that unit, for example: What if
23 there isn't enough supply from the unit. We have to
24 look at the question of woodflow into that mill from
25 elsewhere. So in that sense there is a consideration

1 of one of the elements Mr. Hanna referred to on import
2 of wood for example.

3 I think we have always expected that --
4 and the reason we didn't consider recycling itself as
5 an 'alternative to' onto itself is that it wouldn't
6 meet the purpose of the undertaking entirely on its
7 own, but it would be something that would contribute to
8 any one of the 'alternatives to' at some level, if you
9 will.

10 So in that sense, it is something that we
11 would take into consideration as well at the level of
12 the individual mill user for example.

13 THE CHAIRMAN: Well, in that sense, could
14 it be considered an alternative method of carrying out
15 the undertaking?

16 MR. BISSCHOP: Again, with all the
17 discussion and argument we've had around the use of the
18 words, I am not sure I would call it an alternative
19 method. I wrote down earlier that you expressed it as
20 an alternative way of carrying out timber management.
21 It's different from what I would consider alternative
22 methods the way we use it.

23 THE CHAIRMAN: All right. Well, without
24 getting hung up on the semantics and the terminology,
25 attempt to satisfy yourself, Mr. Hanna, that your

1 concerns will in fact be addressed and let's spend less
2 time if we can, both of us, in trying to slot it into
3 your concerns into 'alternatives to' or alternative
4 methods of carrying out.

5 I think the Board sees it as something
6 that can be addressed in terms of conditions of
7 approval.

8 MR. HANNA: Q. Mr. Bisschop, two
9 questions then that might help me understand the
10 evidence of this panel better, at least the evidence
11 with respect to 'alternatives to'.

12 First of all, on page 16 of the EA, the
13 last paragraph on that page, the last sentence, it
14 starts at line 32 with: "Furthermore..."

15 MR. BISSCHOP: A. Yes.

16 Q. It indicates there that one of the
17 advantages of the Class EA approach is that
18 alternatives to the undertaking can be dealt with at a
19 generic level. Now, for the time being, accepting that
20 'alternatives to' with import and recycling and
21 whatever are components of 'alternatives to', how
22 should I take that statement?

23 A. We include that statement as a simple
24 indication that once and for all under the requirements
25 of the Environmental Assessment Act we can address the

1 subjects of purpose, rationale and 'alternatives to'
2 and gain an approval for the undertaking. Having
3 addressed those subjects once through a Class EA, that
4 there wouldn't be the need then to address those same
5 questions because the answers would end up coming out
6 the same at the level of individual forest management
7 units.

8 Q. Now, when you say 'the undertaking',
9 are we using the undertaking in the way the Board has
10 defined it in their latest ruling?

11 A. I don't think we -- well, when the
12 statement was written it certainly wasn't taking that
13 into consideration. The undertaking was very much
14 defined as the activities of timber management, so that
15 the purpose of carrying out those activities, as we
16 defined them, was to achieve the production of wood for
17 the forest products industry and the rationale and
18 alternatives as we expressed them in the EA.

19 Q. But let's talk about now the context
20 that we are dealing with this application in, because
21 that I think is the important thing.

22 MR. FREIDIN: Well, that is not, I don't
23 think -- well, if we do get into a situation where we
24 are talking about the undertaking being somehow defined
25 differently, Mr. Chairman, it would be hypothetical at

1 least until such time as any decisions are made.

2 I mean, I just want to be careful that we
3 don't -- the witnesses prepared their evidence and will
4 be giving their evidence based on the undertaking being
5 defined as the Ministry indicated it was defined. If
6 we are going to be dealing with it on some other basis,
7 then it's going to be on at least something different
8 perhaps. I am not sure exactly how to raise any
9 objection, but when we get into the area we better be
10 careful.

11 I am not objecting to the question I
12 don't think, but...

13 * THE CHAIRMAN: Well, the Board has
14 indicated in its ruling what it feels is the
15 undertaking before it from the weight of the evidence
16 produced to date and whether that changes will have to
17 be through some decision of some other body, but the
18 Board is going to proceed for the remainder of this
19 case, failing being advised otherwise, in fact the
20 undertaking consists of the timber management planning
21 process in respect of the four named activities.

22 MR. FREIDIN: Thank you.

23 THE CHAIRMAN: That is the Board's
24 position.

25 Now, if the proponent wishes to take some

1 other position, they are free to do so, but that will
2 probably not be the basis upon which the Board decides
3 this case unless told otherwise.

4 That doesn't, of course, take away, Mr.
5 Bisschop, from the fact that the way you described it
6 or thought you were describing it in the Class EA might
7 have been different.

8 MR. FREIDIN: I think we would just ask
9 for some clarification in which Mr. Hanna used the
10 words. Now that we have this decision, I guess you
11 have provided the clarification, and we can understand
12 Mr. Hanna's question in that context, I am sure that we
13 understand the question, I think we all do now.

14 MR. HANNA: Q. Perhaps, Mr. Bisschop,
15 what I am getting at is: There is two levels of
16 dealing with 'alternatives to'. One is the planning
17 process; either we plan or we don't plan, and we'd
18 say - and I think, Mr. Chairman, your words were, we
19 have really got two alternatives; to do nothing or
20 plan - and in that sense we can say: We will do an
21 'alternatives to' evaluation at that level.

22 Then we have that next level when we talk
23 about the specific activities, and I would submit that
24 certainly in reading the evidence you put together in
25 the EA and your witness statement it was at that level

1 that you were directing your evidence; is that fair?

2 MR. BISSCHOP: A. Directing which
3 evidence?

4 Q. The evidence that you presented to
5 this Board up to this time, particularly this witness
6 statement?

7 A. In this panel you mean?

8 Q. Yes, in this panel particularly?

9 A. We have indicated no question, we are
10 dealing at the subject level of 'alternatives to' not
11 alternative methods, and I define 'alternatives to' in
12 terms of, first of all, looking at the purpose and
13 different ways of achieving the purpose.

14 MR. HANNA: Mr. Chairman, can I just have
15 a moment to speak to Dr. Quinney?

16 ---Discussion off the record

17 MR. HANNA: Q. Mr. Bisschop, can I go
18 back to the four alternatives that I mentioned, the
19 ways that we could possibly satisfy the purpose and
20 I'll just list them off: There is production of virgin
21 wood fiber, recycling, importation and demand
22 management, accepting those as four different
23 components that we might mix and match to satisfy the
24 purpose as it's currently stated.

25 A. I think the one comment I would make,

1 I think, is - and I just use the example of recycling
2 the way we have described it - that we don't see that
3 as a reasonable viable alternative to consider on its
4 own to meet the purpose.

5 Q. Yes, I appreciate that.

6 A. And I would make that comment
7 probably --

8 Q. Several of the others?

9 A. On several of the others, demand
10 management, however that is meant to be defined.

11 Q. Okay. But by the same token, they
12 may be components of an overall approach to satisfying
13 that purpose?

14 A. Yes.

15 Q. Now, of those four components, can
16 any of those be eliminated out of hand at this time
17 from all forest management units within the area of the
18 undertaking for the foreseeable future?

19 A. In the sense that at the level of the
20 forest management unit one would be considering those
21 questions potentially?

22 Q. Yes.

23 A. To meet the purpose of the
24 undertaking, I think probably, no, you can't eliminate
25 any of them.

1 Q. Can we move to another still
2 'alternatives to' topic but a different thrust at this
3 time; and, that is, what I will call reasonable
4 'alternatives to' and I precis'd this in the three
5 questions -- the three central questions.

6 THE CHAIRMAN: Aren't all 'alternatives
7 to' supposed to be reasonable?

8 MR. HANNA: Well, perhaps -- I can answer
9 that now, Mr. Chairman. I think it's less confusing if
10 I don't answer it, and if I haven't answered it, I am
11 quite prepared to come back to it at the end of this.

12 Q. The first question is: Is an
13 'alternative to' simply one strategy for achieving the
14 purpose, or is it more realistic to consider a mixture
15 of components?

16 Okay, that is the first question.

17 MR. BISSCHOP: A. When you say a mixture
18 of components, do you mean a mixture of those various
19 strategies?

20 Q. Exactly. I am not asking these
21 questions, I am just setting out; these are the points
22 that I am hoping to address in these next set of
23 questions. By the way, I am going to ask you that
24 question, so you can think about the answer at the same
25 time.

1 Second of all, if it is a mixture, how
2 can a reasonable array of 'alternatives to' be defined
3 and analysed; and, thirdly, what are reasonable
4 'alternatives to' for the Ministry of Natural
5 Resources, the proponent, to consider?

6 Now, the first question I would like to
7 now ask you to answer, and I'll read it again: Is an
8 'alternative to' simply one component like recycling
9 that may achieve the purpose, or is it more realistic
10 to consider a mixture of components, for example,
11 virgin fiber plus recycling as an 'alternative to'?

12 A. Well, on that subject in particular I
13 think I said a few minutes ago that we did not
14 consider, for example, recycling as a reasonable
15 'alternative to' on to itself, but rather it would
16 contribute to the purpose of any of the other
17 'alternatives to' that we identified.

18 Q. Now, are the four components that I
19 have described to you before, did you consider all of
20 them in your 'alternatives to' analysis individually or
21 collectively?

22 A. We didn't look at the demand
23 management option you've indicated specifically under
24 'alternatives to'. The others we looked at
25 individually, and I think with the virgin wood example,

1 of course, in various ways through alternatives B and C
2 and timber management, but we didn't look at various
3 mixtures of those optional ways.

4 I think in direct evidence we indicated
5 that there were numerous permutations and combinations
6 we could have addressed, but we selected the range --
7 basically, we selected the range of timber management
8 versus, if you will, no management of the timber
9 resource and the do-nothing alternative as the range of
10 'alternatives to' to consider for this environmental
11 assessment.

12 Q. And the do-nothing alternative was
13 basically import all the wood and produce the remainder
14 from private land which you could say was importing all
15 of the wood?

16 A. That is sort of an added description
17 we gave to the do-nothing alternative to try to address
18 where would the wood supply come from under that
19 option.

20 Q. Now, OFIA, the Interrogatory No. 1, I
21 believe you did discuss this in your evidence-in-chief,
22 asked about if all alternatives have been considered,
23 and your response was:

24 "There is an infinite number."

25 And I believe you did discuss this in

1 your evidence-in-chief. What I didn't see in your
2 evidence-in-chief was how you decided to select the
3 subset of 'alternatives to' that you did?

4 A. In the written evidence-in-chief?

5 Q. Well, the written or verbal.

6 A. Well, verbally in the discussion that
7 we had I believe with the Chairman we indicated that
8 we -- that in the Class EA originally, the version we
9 have in front of us, we looked at three alternatives,
10 we looked at do nothing, because it's normal practice
11 in an environmental assessment; we looked at our
12 undertaking; and we looked at, if you will, something
13 that could be characterized as no management.

14 We updated that range of options in the
15 statement of evidence by including alternative B which
16 looked at the no management option, and what I think I
17 characterized as a sort of 1980s/1990s mode of
18 addressing other values.

19 So we added that alternative in the
20 statement of evidence to make, if you will, the
21 original alternative of no management, which is
22 alternative C in this analysis, a bit more reasonable,
23 if you will, to address the consideration of the
24 effects and the consideration of other values in the
25 forest.

1 So that is sort of the thinking behind
2 establishing the range of 'alternatives to' that we
3 did. I think that is all I would say.

4 Q. I understand that. But I didn't --
5 maybe I don't understand what you are saying, but that
6 doesn't seem to explain to me how you took this almost
7 infinite number and narrowed it down to a reasonable
8 number.

9 I understand the 'alternatives to' that
10 you have brought forward, and you have given some
11 rationale for that, but how did you deal with all those
12 other 'alternatives to' out there that you have
13 submitted in your response to Interrogatory No. 1
14 exist?

15 A. Well, I don't think we looked at it
16 in the sense that we defined an unlimited number,
17 infinite number and narrowed it down; we identified
18 very clearly originally three alternatives as outlined
19 in the Class EA.

20 In our explanation we indicated that we
21 could have identified an unlimited number of
22 alternatives but, for purposes of differentiating
23 differences amongst them, we felt that the basic
24 difference that existed between the alternatives we had
25 would be only slightly modified for the range of

1 possible alternatives that might be variations on each
2 of those things.

3 Q. But is not fair to characterize the
4 'alternatives to' analysis that has been done as
5 basically taking the extremes, and just as example, you
6 discounted recycling as an 'alternative to' because it
7 could not in itself satisfy the complete demand for
8 wood fiber. On that basis said: Well, that is
9 obviously not a reasonable 'alternative to'.

10 A. That's correct, we did that with
11 recycling, yes.

12 Q. And you did the same with, in fact,
13 import?

14 A. In effect, that is certainly the
15 conclusion of looking at that one, yes.

16 Q. And you didn't consider demand
17 management?

18 A. We make the -- I am not sure that I
19 understand completely what you would define as demand
20 management.

21 Q. Well, I can give the examples, if you
22 wish, that I presented before.

23 A. We make the assumption that for the
24 purpose of the undertaking we are going to provide wood
25 for the forest products industry.

1 In terms of our analysis of the
2 alternatives we looked at, I know you weren't here for
3 direct evidence, but in our exhibit - I can't recall
4 the number - Exhibit 987, we indicated that for
5 purposes of the analysis we assumed for each of the
6 alternatives that the market conditions that were
7 described in Panel 5 were a given for each of those
8 alternatives. So, in that sense, we looked at the
9 question of demand in our analysis.

10 We didn't look at various ways of
11 managing demand, I assume from your position, to reduce
12 the demands on virgin wood fiber.

13 THE CHAIRMAN: Mr. Hanna, isn't the
14 problem that arises in all of these situations the mere
15 fact - and I think I have alluded to this in other
16 decisions of this Board - that any EA is proponent
17 generated, any proponent that looks at a given set of
18 circumstances will arrive at the conclusion that the
19 range of alternatives that should be discussed should
20 be such and such.

21 That may not accord with anyone else
22 looking at the EA. If you were developing the EA or
23 your own client, you may come out with a different
24 range of alternatives. It's just a fact of the way
25 this process works; that is, the undertaking is

1 presumably defined by the proponent and the EA is
2 prepared by the proponent at the outset and the Act
3 specifies that they have to cover a reasonable range of
4 alternatives and it is up to the Board or the
5 decision-maker, the Minister if it doesn't come to the
6 Board, to decide what in fact is reasonable.

7 Now, if there is a hearing and if those
8 in opposition or even those in support put forward a
9 different range or set of alternatives and are prepared
10 to adduce evidence on those alternatives, then there is
11 nothing that the Board can see that prevents the Board
12 from amending the EA. If and when it wishes to accept
13 the EA, it may deny approval and, therefore, nothing
14 will be amended.

15 But, and I hate to harken back to the
16 same language that I have used in other cases, but the
17 proponent cannot be a mind reader, they cannot
18 necessarily guess in advance which alternatives may be
19 chosen by somebody else had that other person
20 formulated the EA at the outset, and this is a problem.
21 And I might go further and suggest that the present
22 guidelines for preparing EAs don't necessarily cure
23 that problem.

24 The proponent can go to the Ministry of
25 the Environment, to the Environmental Assessment Branch

1 and ask: What should I put in my EA, and they may come
2 forward with a range of alternatives and suggest that
3 if you cover this alternative and that alternative and
4 perhaps one or two others in the context of that
5 particular application, you will probably be okay.

6 Then the application comes before the Board and at that
7 point in time parties in opposition have a chance both
8 during the government review, public review period and
9 during the course of the hearing to take a look at the
10 EA in some detail and may well come forward with
11 alternatives that were not initially canvassed within
12 the range chosen by the proponent at the outset.

13 When that occurs, what do you do? It is
14 very difficult for a Board to just come out and say
15 that because the proponent did not choose a particular
16 alternative their environmental assessment is
17 unacceptable.

18 What the Board looks for is that the
19 proponent shows what appears to be a reasonable range
20 and the word 'reasonable', I would suggest to you, is a
21 subjective term that is within the jurisdiction of the
22 decision-maker to decide at the end of the case, and if
23 the decision-maker feels that that range is
24 unreasonable; if it hasn't been cured, so to speak, by
25 other alternatives being put forward by either the

1 proponent during the course of the case itself, the
2 presentation of evidence, or other parties during the
3 presentation of evidence so that the EA can be amended
4 to include other alternatives, then the decision-maker
5 at the end of the case has to make a decision one way
6 or the other.

7 And if on balance it says that the range
8 covered was unreasonable and it wasn't shored up, so to
9 speak, during the course of the case, then presumably
10 the Board would hold that the environmental assessment
11 is unacceptable. It would never then get to the second
12 decision as to whether the undertaking should proceed.

13 But that appears to be the process and,
14 consequently, I think it is fair game for you to
15 question: Why didn't the proponent include a
16 particular alternative such as demand management, such
17 as recycling and hear the answer as to why it didn't or
18 where those alternatives are included.

19 I might add that they might not just be
20 included as 'alternatives to', they may be bound up as
21 part of an alternative method because nobody is a
22 hundred per cent clear on how you get it into one
23 category or the other, and that is a continuing source
24 of confusion, I would suggest, in this whole process.

25 But that appears to be how we go about

1 these things and I thought I should lay that out for
2 you as the Board sees it because we, of course, come
3 across this in many cases and I have attempted in those
4 other cases to deal with it as best we can.

5 MR. HANNA: Thank you, Mr. Chairman. I
6 would simply say that what you have laid out is the
7 basis upon which I have structured this
8 cross-examination, so I think we are both on the same
9 wave length in that respect, so I don't expect any
10 problem.

11 THE CHAIRMAN: Okay.

12 MR. HANNA: I would also say that I'm
13 sure you are well aware that this question of what is
14 reasonable was a major issue before the SNC hearing and
15 there was evidence brought as to what would be a
16 reasonable test of -- what would be an appropriate test
17 of reasonableness in terms of 'alternatives to'. At
18 that particular hearing I think the Board ruled in that
19 respect and it is in that context that I am coming
20 forward with these questions.

21 THE CHAIRMAN: Okay. Bear in mind,
22 though, that there is no stare decisis in terms of
23 Board decisions. One panel is not necessarily bound by
24 a decision made by another panel, although, having said
25 that, we do attempt to exhibit some degree of

1 consistency where we can.

2 MR. HANNA: Thank you, Mr. Chairman.

3 Q. Mr. Bisschop, where we left off was
4 that we -- I think it's fair to characterize that you
5 looked at these different components in themselves as
6 being able to satisfy the purpose of the undertaking.
7 I think your analysis shows quite clearly that, at
8 least in the case of recycling, that it is not able in
9 itself to wholly meet the purpose of the undertaking.
10 I think simple logic would tell us that and I also
11 think we are going to have some reason to insist that
12 you can't continually accept the fiber.

13 Now, the question that springs up in my
14 mind is that there is, the way I see it, a whole range
15 of intermediates between those extremes; in other
16 words, there is different combinations of those
17 extremes that could satisfy the purpose of the
18 undertaking.

19 I will give you a simple example. You
20 can import a small portion of the wood, we can recycle
21 a portion of the paper to meet the fiber supply and we
22 could have some virgin fiber in addition to that. And
23 there's an endless number of, in your words,
24 permutations and combinations we could end up with in
25 terms of the balancing of the achievement of the

1 purpose for each one of those components. Would you
2 agree with that?

3 MR. BISSCHOP: A. Yes.

4 Q. Now, why do you feel that it is
5 reasonable to look at the extremes and not the
6 intermediates?

7 A. I think the key point on those other
8 options, for example, recycling and importing, is
9 that - and I think I have acknowledged that there is an
10 element of those that is considered at all times - that
11 in and of themselves those two options contribute
12 relatively very, very little of the requirements.

13 The requirement for virgin material
14 through our undertaking of timber management is
15 certainly going to be the major requirement. So, in
16 that sense, I think the consideration of various
17 mixtures of those possible options is always going to
18 have a large element of provision of virgin material
19 and we conclude that the way to provide that virgin
20 material is through the comprehensive timber management
21 undertaking.

22 So I think even if you were to consider
23 those, say, for example, just the two options of
24 recycling and import as permutations of either
25 alternative A -- I mean, alternative B and C or timber

1 management, the relativity amongst the various options
2 would probably still come out the same in favour of
3 timber management as the active management part, if you
4 will, of achieving the purpose.

5 Q. But what gets lost in the cracks
6 there is how -- well, perhaps I will ask it this way.
7 I mean, are there not different levels of recycling,
8 even given that it may have some limitations in terms
9 of the total amount or total component of the purpose
10 it might satisfy?

11 A. Mr. Duncanson last week gave evidence
12 on the contribution of recycling--

13 Q. Fine.

14 A. --and I think perhaps it is best he
15 can perhaps add some additional explanation there to
16 give you some idea of the contribution it could make.

17 Q. Well, just before you begin, Mr.
18 Duncanson, I just want to make sure you understand. I
19 have gone through carefully the presentation you've
20 made, both verbally and written in terms of recycling.
21 I think it is reasonably comprehensive, so I understand
22 where you are coming from on that point of view.

23 What I am asking here is: Given the
24 economic and technical constraints of recycling, there
25 still is a fair bit of leeway in terms of the

1 proportion that recycling plays in the total supply.

2 THE CHAIRMAN: Just before you answer
3 that. Are you suggesting, Mr. Bisschop, that the Board
4 should not be considering the other elements, such as
5 recycling and importing, in terms of approving this
6 undertaking, if it chose to approve the undertaking on
7 the basis of the Ministry's preferred alternative of
8 carrying out timber management in respect of the four
9 activities?

10 In other words, is it an either/or
11 proposition in your mind, or can the Board rightfully
12 consider approving the timber management in respect of
13 the activities which include components of recycling
14 and other elements referred to by Mr. Hanna?

15 MR. BISSCHOP: I think I agree with your
16 latter statement, Mr. Chairman. I think what I am
17 saying is, we have to look at MNR's mandate and MNR's
18 ability to contribute to achieving the purpose, and I'm
19 not -- MNR can't control demand, MNR can't control the
20 contribution of recycling, but I think in earlier
21 discussion about half an hour ago the statements that
22 you made that basically put recycling and importing and
23 those various possibilities into the context of timber
24 management as making some contribution to the purpose,
25 I agree with your statements on that.

1 I think where I am looking at it and
2 where the Ministry is looking at it is in terms of what
3 active contribution does and can the Ministry make to
4 achieving the purpose of the undertaking.

5 MR. HANNA: Q. Mr. Bisschop, I am going
6 to ask you some questions on that, but maybe you can
7 help me here. How will these matters such as a
8 proportion of the fiber that's satisfied through
9 recycling and import, et cetera, where in the timber
10 management planning process will that be considered and
11 a decision reached as to what proportion of the supply
12 would be met by virgin fiber as opposed to other means?

13 MR. BISSCHOP: A. I think it's probably
14 as simple as the demand figures provided by industry at
15 the time of allocating the maximum allowable depletion.
16 What is the supply that is available from the unit,
17 what is the demand for virgin material from that unit
18 in relation to -- for example, with the Canadian
19 Forest Products' new proposal here in Thunder Bay of
20 the de-inking line: How much of their demand do they
21 expect to see provided by recycled material; therefore,
22 how does that reflect on how much demand do they have
23 for virgin material.

24 Q. But that's --

25 A. So I guess the point I am making is

1 at that -- in the timber management planning process it
2 is at the point at which the industrial demand is
3 brought into the equation and the balancing between
4 demand and supply as defined through the maximum
5 allowable depletion that those kinds of considerations
6 would come into play.

7 Q. But that puts your Ministry in an
8 extremely passive role. You aren't proposing in that
9 context the Ministry taking an active role and
10 promoting wiser and more better use of our fiber
11 resource, you are simply saying we will respond to what
12 the industry says they need?

13 A. I think, to be quite frank about it,
14 I think that's the position we are in on that question.
15 We can't control demand, and in terms of recycling
16 we -- for example, through the evidence Mr. Duncanson
17 has given, we can give our understanding of what we see
18 as the contribution of recycling, particularly
19 provincially, but I think he has led some information
20 about how that relates to the area of the undertaking
21 as well. And with that background knowledge we can
22 understand better what demand we have to meet for
23 virgin material.

24 MR. MARTEL: Can I ask a question then.
25 In fact, it's not part of the plan at all then, it's an

1 occurrence, an event that might just happen, but it is
2 not part of timber management planning, per se, that
3 recycling in future will constitute 11 per cent, if I
4 can use the figure, of how we are going to satisfy our
5 needs.

6 I mean, it might happen because a company
7 decides to install a line that it will happen, but MNR
8 isn't front and centre trying to make it part of the
9 process?

10 MR. BISSCHOP: Not that I am aware of,
11 Mr. Martel. I think it's fair to say it's a relatively
12 recent development in Ontario, in fact very recent, and
13 our look at the question of how much is recycling
14 actually going to contribute to reducing, if you will,
15 virgin wood requirements is probably only as recent as
16 Mr. Duncanson's work.

17 MR. MARTEL: Then Ontario's role in
18 moving ahead, if one can use that term, because I see
19 that as moving ahead when you start to recycle,
20 Ontario's role, the Ministry's role in that respect,
21 unless someone is doing, is nil?

22 MR. BISSCHOP: I'm not sure I'm the
23 person who can answer that question at all, Mr. Martel.

24 MR. ARMSON: Mr. Chairman, could I
25 interject--

1 THE CHAIRMAN: Yes.

2 MR. ARMSON: --and perhaps attempt. It
3 seems to me, Mr. Chairman, that we are a little hung up
4 on one activity, if you like, recycling.

5 Historically, and I believe there has
6 been evidence to this, that in terms of timber
7 management planning and the activities there are any
8 number of factors. Another factor would be the
9 technology that exists at any time, and I give you an
10 example of the introduction of chip and saw technology
11 which changes the demands, changes the dimension in
12 which the timber management planning and activities
13 take place. Another would be the utilization of a
14 species, again related to technology. Recycling is
15 another one of these things.

16 These are developed independent of the
17 Ministry, they come about partly as a result of
18 society, partly as a result of factors that take place
19 not necessarily even in this province, country or
20 continent.

21 And so what we are looking at is timber
22 management, both the planning and the activities,
23 responding to that and in that sense I think Mr.
24 Bisschop is saying: Yes, it is a passive role, but it
25 is not passive in a negative sense.

1 MR. MARTEL: No, but I don't want to make
2 it appear as though I am saying that.

3 What I am saying is that, MNR is not
4 taking it upon itself as part of government policy that
5 they lead an active role in trying to indicate a
6 percentage of what they think we could obtain by
7 recycling as opposed to simply going out there and
8 engaging in timber management.

9 MR. ARMSON: Well, Mr. Martel, I think
10 the point is it's not an either/or, and it's not saying
11 you will recycle so much. What do you do in a timber
12 management area where sawlogs are the prime product,
13 and the whole wood and the chips becomes a very
14 complicated situation, and to impose some kind of an
15 arbitrary number it seems to me to be not really
16 talking account of the situation.

17 THE CHAIRMAN: Mr. Armson, again to use
18 your terminology, it is not necessarily an either/or in
19 terms of the Ministry's role being either passive or
20 active. The reason I say that is, take a recent
21 example of a waste management field or the stack
22 emission side of waste management where the government
23 as a policy has come along and said to some of the
24 major polluters in the province: You shall reduce your
25 stack emissions to such and such a percentage by such

1 and such a point in time.

2 Realizing that in all cases, if the
3 technology is there it's very expensive and there is
4 going to have to be a shaking out in the marketplace to
5 be able to still remain competitive; and if the
6 technology isn't there, you are going to have to start
7 addressing your minds and putting in the research
8 dollars to develop that technology.

9 Now, bringing it back to the present
10 question the Ministry could say presumably, or at least
11 I ask you: Could the Ministry say, that if we think
12 that recycling is a good thing and if we think that in
13 order to reduce the demand for virgin fiber through
14 recycling we should, policy-wise, encourage actively
15 industry to do something about it either by providing,
16 for instance, research assistance or by indicating that
17 by such and such a year recycling shall comprise "x"
18 percentage of meeting the wood fiber production quoted,
19 whatever it is projected to be, government in that
20 sense could take an active role, a more active role
21 than it is presently taking.

22 MR. ARMSON: I would agree, Mr. Chairman,
23 but if I might, using your analogy of the smoke stack
24 and sulphur dioxide for the sake of example, I think
25 that setting a limit on the amount of sulphur dioxide

1 in emission is an appropriate way to tackle that, but
2 the alternative and what I see as an analogy is, one
3 doesn't tell the mining company: You can only extract
4 ore with this percentage of sulphur in the ore.

5 I mean, by putting a limit on the
6 effluent, if you will, you get backtracks into the
7 system and, therefore, the extraction process they will
8 well go to a lower percentage sulphur.

9 And what I am saying is, in terms of
10 recycling, if society and government says: We are
11 going to set and perhaps demand certain levels of
12 recycling and expedite it, then that will backtrack
13 through the system ultimately in terms of timber
14 management to the provision of raw material because
15 there are always going to be some virgin fiber.

16 And it seems to me that's a logical
17 sequence, rather than to start at the timber management
18 plan and say: There is some level of recycling you
19 have got to take into account. It will come in by way
20 of the system rather than start at the bottom. And
21 that's really what I'm suggesting.

22 THE CHAIRMAN: And, in your view, is that
23 what some of the American jurisdictions that Mr.
24 Duncanson referred us to last week have done and said
25 effectively the end product shall contain "x"

1 percentage of recycled material?

2 MR. ARMSON: That will back through the
3 system, sir, yes.

4 THE CHAIRMAN: But that's an example of
5 what you are saying?

6 MR. DUNCANSON: Mr. Chairman, if I might.
7 I think it has been evidenced by my witness statement
8 and by my presentation that the system has already
9 realized that. We consume in Ontario close to a
10 million tonnes of waste paper and none of that was
11 legislated in. This was capacity that was built
12 recognizing that there was a large resource out there,
13 a large collection of waste paper.

14 You know, the amount of roundwood that
15 would be displaced by the next stage of our recycling
16 where we are starting to mandate that we recycle, I
17 think I've already indicated that we are pretty well
18 close to the peak of it.

19 Using the Great Lakes example down the
20 road here, they will displace 185,000 cubic metres of
21 roundwood. When you add that capacity into the overall
22 capacity figures that I showed in revised Table 3, I
23 believe it was, we are getting close to the 50 per cent
24 recovery rate which is the maximum that has been proven
25 most societies can economically collect.

1 So even if you were to add another two
2 more de-inking lines in northern Ontario, the
3 equivalent amount of roundwood - just to put it in
4 context for Mr. Hanna because he wasn't here - works
5 out to be about 2 per cent of our total wood supply.

6 MR. MARTEL: We started talking about
7 recycling in Ontario back in the early 70s, we are not
8 just talking about wood, we were talking about
9 recycling glass, I mean, that's been on the table for I
10 don't know how long or how many times it was promised.
11 We talked about recycling tin cans years ago, and
12 unless government takes a more active role then, in
13 fact, you are not going to see much progress.

14 I guess that's my concern, that if you
15 sit right back and governments don't say anything, in
16 other words, set targets as they did for emissions,
17 then in effect we never reach the goal that's desired
18 by society.

19 I mean, government has to take somewhere
20 a more positive or a more leading role in achieving
21 those goals. Possibly you don't agree with that, but
22 that's the way I see it.

23 MR. DUNCANSON: No, I agree with that on
24 glass, plastics and metal. And as we are seeing right
25 now in Toronto, the glass is not being consumed by our

1 industries; they can't take it all, there is too much
2 contamination.

3 The waste paper is only building up
4 temporarily waiting until, you know, the new capacity
5 comes on stream to consume it, but you would have to
6 look at it from that point view I think.

7 MR. MARTEL: My understanding in Europe
8 where they decided long ago and where we sent a number
9 of delegations to places in Germany as early as, what,
10 19 -- between '77 and '81, they were using far more
11 material, reusing far more material than we are even
12 close to achieving 10 or 15 years later.

13 I mean, one either decides to be passive
14 in these things or active, and if you are not active,
15 then you are not going to make much headway if you just
16 rely on the private sector to achieve those things.
17 And I am not denegrating the private sector at all, I
18 am saying: Unless they see it as a responsibility --
19 or unless they see it as a profit to be made, whereas
20 government has to look at it as a need as opposed to:
21 Well, can you make money from it.

22 I mean, I think most companies have been
23 going to recycling paper intend to make a profit,
24 otherwise they couldn't stay in business.

25 MR. DUNCANSON: Yes.

1 MR. MARTEL: Whereas government has to
2 look at it from a different point of view, is what is
3 good for society and that's why I worry about not
4 having a more, let's say, active role.

5 I understand what Mr. Armson said about
6 location, different products and so on. If the
7 pronouncement isn't there, I don't think it's going to
8 make much headway.

9 MR. DUNCANSON: I agree with you, but I
10 feel -- strongly feel that in the waste management --
11 waste recycling management that government has to be
12 very careful and has to target those specific products
13 that they are collecting, they are not recycling they
14 are just collecting, and properly sit down with
15 industry and discuss it.

16 As far as waste paper is concerned,
17 because of the fact that -- and it has been very well
18 documented through Panel 5, we are net exporters of
19 paper products, we have no problem consuming all the
20 waste that can be thrown at us from whatever
21 jurisdiction, then you get into economics; how far can
22 you draw upon waste material.

23 On the other products that you mentioned
24 and you referred to Germany and France and Italy, and
25 you can throw those in as well, when you start talking

1 about glass in particular, in Ontario we are net
2 importers of glass bottles. That's opposite to what we
3 are on any of the forest products commodities.
4 Therefore, we are collecting more glass than we have
5 the capacity, domestic capacity to produce. You just
6 look at, you know, the wine bottles that are coming in
7 from California and things like that. So, you know,
8 you have to look at it at the economic advantage point.

9 MR. HANNA: Mr. Chairman, perhaps just
10 back to the point. I think Mr. Martel has captured the
11 gist of where I am coming from on this.

12 The concern I have is that these issues
13 do come up and are discussed in a timber management
14 plan; in other words, that we have some forum in which
15 these issues are discussed and I think Mr. Armson's
16 point is a valid one, one that we want to consider when
17 you make this determination.

18 Q. The question I want to ask Mr.
19 Bisschop is: How would this come out on the table, in
20 what process -- where in the process do we put out the
21 kinds of things Mr. Armson has talked about, Mr.
22 Duncanson has talked about, so we can decide what is
23 the appropriate degree of virgin fiber, what is the
24 appropriate degree of imported fiber, what is the
25 degree of recycled fiber, and how should we be doing in

1 terms of managing peoples' perceptions and expectations
2 in terms of wood products from that?

3 MR. CASSIDY: I don't understand that
4 question in terms of managing perceptions, Mr.
5 Chairman. We are talking about activities in the
6 planning process, and I sat quietly here and listened
7 to some of these questions, but that one just baffles
8 me.

9 How does Mr. Hanna propose we manage
10 perceptions?

11 MR. HANNA: Mr. Chairman, I'll take that
12 out of the question at the present time, I am planning
13 on dealing with it. I think it's simpler just to take
14 that out of the question.

15 MR. FREIDIN: Can you repeat the question
16 then perhaps?

17 MR. HANNA: Q. Sure. Where in the
18 planning process on a timber management unit basis will
19 the types of things we just talked about be considered,
20 their advantages and disadvantages be evaluated, and
21 the appropriate degree of the wood fiber demand be
22 decided in terms of virgin fiber versus recycled fiber
23 versus imported fiber.

24 MR. BISSCHOP: A. Again, Mr. Hanna, I
25 think the answer I gave earlier about where in the

1 process do we look at what demands do we have to meet
2 in relation to the supply that is available, that is
3 the point at which those kinds of considerations would
4 be taken into account.

5 And I don't mean to indicate there that
6 there is this analysis of advantage and disadvantage
7 that you are talking about, but rather: What is the
8 demand of industry and what portion of that demand,
9 whether it be total or perhaps something less than
10 total demand, is required from new roundwood material
11 from the management unit.

12 Q. Well, let's put aside the
13 alternatives to/alternative methods dichotomy - and the
14 Chairman I think quite rightly said it's very hard to
15 draw a line between the two - but whether you talk
16 about 'alternative to' or alternative methods, the Act
17 still requires you to look at advantages and
18 disadvantages.

19 Let's accept that it's an alternative
20 method; therefore, if it is an alternative method the
21 Act requires you to look at those advantages and
22 disadvantages. Where will that be dealt with in the
23 planning process?

24 A. First of all, I am not -- I, like
25 others, probably are getting confused here. I am not

1 sure I look at that question under the alternative
2 method kind of consideration, but what I tried to
3 indicate was that that portion of the demand that we
4 need to provide from new roundwood, which we provide
5 through carrying out the undertaking of timber
6 management, would be addressed at that time in the
7 process.

8 I don't believe -- first of all, I
9 indicated that - and Mr. Duncanson has elaborated
10 somewhat on this - by and large most of the demand
11 requirement is going to have to be met from new virgin
12 roundwood material which means carrying out, as we
13 propose, timber management activities. We then, for
14 argument sake, say that 95 per cent of your demand has
15 to be met from new material and the other five can be
16 met through whatever combination of recycling or wood
17 from elsewhere.

18 We looked at the environmental
19 consequences of meeting that 95 per cent through, yes,
20 alternative method examination as we plan the
21 activities of timber management through the timber
22 management planning process.

23 THE CHAIRMAN: Mr. Hanna, are they not
24 looking at those questions in this hearing through some
25 of the evidence that they have put forward--

1 MR. HANNA: Well, that takes me back --

2 THE CHAIRMAN: --such as Mr. Duncanson's
3 evidence?

4 MR. HANNA: Well, that takes me back
5 through the original questions I asked, that in order
6 to decide on how much importation, all of these
7 different things, it's really very site-specific and
8 you can't make that decision until you have looked at
9 the advantages and disadvantages on a unit by unit
10 basis. That is the whole thrust of the questions I
11 have asked.

12 THE CHAIRMAN: Well, with respect,
13 certainly you can look at some of those questions on an
14 industry-wide basis and on a generic level because you
15 have to take a look in the aggregate, to a large
16 extent, as to what is the net effect of, say, recycling
17 on industry's net demand across the area of the
18 undertaking for wood fiber.

19 And Mr. Duncanson has sort of indicated
20 that recycling, given the existing capacities, can only
21 provide "x" amount of that wood fiber at this time.

22 MR. HANNA: I accept that, Mr. Chairman.
23 I guess if you take what Mr. Armson was saying, the way
24 that it feeds back through the system, which I accept,
25 that has implications all the way down the line. In

1 order to be able to do the weighing of advantages and
2 disadvantages one has to track that back to the system
3 and see what the consequence of that are to arrive at
4 whether or not at what proportion what level of
5 recycling is appropriate.

6 THE CHAIRMAN: Well, there may be a
7 different level of recycling appropriate for a
8 particular management unit, but when you aggregate them
9 right across, as Mr. Duncanson basically has done with
10 his figures, the indication is, is that recycling at
11 the present time, given the present capacity, can
12 provided only "x" amount of wood fiber, and you plot
13 that, I would suggest, against the overall demands of
14 the industry as to the amount of wood fiber that they
15 need.

16 MR. HANNA: Mr. Chairman, could I suggest
17 that we have a break at this time. I think we have
18 gone around the bush on this a fair bit and I don't
19 really know if we are going to go much further at this
20 time.

21 MS. BLASTORAH: I am sorry, I don't want
22 to interrupt Mr. Hanna, I just wanted to make one
23 clarification before we rose with regard to a comment
24 just made by yourself, Mr. Chairman, in relation to Mr.
25 Duncanson's evidence.

1 I may have misunderstood your comment,
2 but I heard you to say or to characterize Mr.
3 Duncanson's evidence as indicating that the levels of
4 recycling were relatively small, the amount of supply
5 from recycled material was relatively small given
6 existing capacity.

7 And I just wanted to clarify that I don't
8 believe that was the exact purport of his evidence. I
9 don't know whether it's appropriate for me to indicate
10 what that is, but I believe - and without interpreting
11 what his evidence - I believe the purport of his
12 evidence was that regardless of even adding two lines,
13 I think he just indicated that the amount of supply
14 that could ultimately be achieved through recycling was
15 very limited, not just given capacity at the present
16 time.

17 I just wanted to clarify that.

18 THE CHAIRMAN: Okay, thank you.

19 All right. I think we will take a break
20 for 20 minutes now.

21 ---Recess taken at 10:15 a.m.

22 ---On resuming at 10:38 a.m.

23 THE CHAIRMAN: Thank you, seated please.

24 MR. HANNA: Q. When we took the break we
25 were talking about this matter of recycling and I had

1 raised the issue of reasonable.

2 Perhaps before I start the discussion to
3 Mr. Duncanson, I believe that I may be asking you these
4 questions, so the Board and the panel understands what
5 I mean by 'reasonable', at least the one definition
6 that has been used of reasonable are things that are
7 within the control of the proponent; in other words, it
8 would not be reasonable for the Ministry, for example,
9 to physically alter, if you will, the capital stock of
10 mills that we have in the province per se because that
11 would be the private sector, we would have no control
12 over that. So, in that sense, that would be an
13 alternative beyond the control of the Ministry and, in
14 that sense, could be argued to be a non-reasonable
15 alternative. And I am using that as my -- as one test
16 of reasonable. So you appreciate where my questions
17 are coming from.

18 So I am looking at which of these
19 alternatives that we talked about might be within the
20 control of the Ministry, what levers the Ministry has
21 that might be able to effect those proportion of the
22 wood fiber demand and demand itself, what portion of
23 that could be controlled by the Ministry itself, what
24 levers does the Ministry have to control them.

25 Now, dealing with the matter of

1 recycling, Mr. Duncanson, my understanding of your
2 evidence and of the matter of recycling in general, I
3 see three, what I will call, factors that control the
4 level of recycling. You may want to add some to it,
5 but let me just give you my three first and see if you
6 agree with them.

7 First is what I will call technological
8 capability, the second is economics, and the third I
9 have termed consumer expectations or preferences. And
10 would you agree that those three factors play an
11 essential role in the level of recycling that is
12 achieved?

13 MR. DUNCANSON: A. Yes.

14 Q. Are there others that you feel should
15 be included?

16 A. Well, I only have one question really
17 on the economics. Is that the economics of
18 availability or -- you know, you can split economics
19 into several tiers. Two major tiers I see right now
20 are, you know, the availability.

21 Q. By that you mean supply?

22 A. The supply -- well, and the cost of
23 that supply.

24 Q. Of course the economics being the
25 cost of supply?

1 A. And the economics of building the
2 capacity.

3 Q. It was my intention to lump both
4 those together, but I have no problem with that
5 differentiation within that category.

6 Now, what I would like to do is to look
7 at each one of those and see if the Ministry of Natural
8 Resources has any mechanisms available to it within its
9 control that it might be able to influence those.

10 Now, in terms of technological
11 constraints, would it be reasonable for the Ministry to
12 direct research money to encourage development of
13 either more efficient milling processes or processes
14 that can accept higher levels or different feedstocks
15 of recycled material?

16 MR. FREIDIN: Mr. Chairman, is the
17 question being put, is it reasonable to do that, or is
18 it within the power of the Ministry to do it? I
19 thought it was the latter that Mr. Hanna was interested
20 in.

21 MR. HANNA: It was the latter.

22 MR. DUNCANSON: I don't know if it is in
23 the power of the Ministry of Natural Resources to --

24 Q. Perhaps, Mr. Armson, you have been
25 there the longest, you might be able to answer that

1 question.

2 MR. ARMSON: A. It's my understanding,
3 Mr. Hanna, that if government has a decision then the
4 appropriate ministry in respect of the technology and
5 so on, I would think it would be the Ministry of
6 Industry Trade and Technology not the Ministry of
7 Natural Resources. We very specifically, in my
8 experience there, do not get into the technology of
9 conversion. Obviously it's of interest to us, but we
10 don't actively get into that route.

11 Q. So if the proponent is the government
12 you would say yes; if the proponent as the Ministry of
13 Natural Resources is seen as distinct from that, you
14 would say no?

15 A. That's correct.

16 Q. Now, in terms of economics would you
17 agree with me, Mr. Duncanson, that the economic supply
18 of recycled fiber can only be evaluated in taking into
19 consideration the cost of the virgin fiber?

20 MR. DUNCANSON: A. I don't understand
21 the context of your question there.

22 Q. Perhaps you can tell me then, what
23 determines what is an economic supply and what isn't an
24 economic supply, how is it determined that it is or is
25 not economic? Recyclable fibers I am talking about.

1 A. Well, when you get down to the
2 economics of supply your main criteria is the -- would
3 be the availability of waste paper. You know, we have
4 indicated in our presentation that the availability of
5 supply in the area of the undertaking is approximately
6 25,000 tonnes annually which would be equivalent to
7 about 40,000 cubic metres of roundwood. The other
8 economics of the supply --

9 Q. I didn't understand fully that
10 portion of the answer relevant to my question. Would
11 you mind - rather than have to go back every time you
12 finish a question - could you just explain it just a
13 little bit better?

14 A. I am trying to build out, you know,
15 cost structure, you know, the cost of the waste paper
16 at the mill site, I am just trying to build up --
17 basically it's going to be repeatable what I did on my
18 overhead presentation.

19 Q. That's why I don't want to go through
20 that.

21 A. I beg your pardon?

22 Q. That's why I don't want to go through
23 that, I don't want to repeat that evidence.

24 MR. FREIDIN: Well, wait a minute. With
25 all fairness, if you are asked a question and it

1 requires you to repeat your evidence-in-chief, then
2 repeat your evidence-in-chief to answer the question.

3 THE CHAIRMAN: No, but I think -- Mr.
4 Freidin, he can repeat it in order to answer the
5 question, or he can advise Mr. Hanna that the answer is
6 contained in the direct and he doesn't want to go
7 through the whole thing again, but that is his answer.

8 MR. FREIDIN: Yes, that is fine. I just
9 don't want the witness to feel that he is taking up the
10 time of the Board if he refers even briefly to his
11 evidence-in-chief.

12 THE CHAIRMAN: No, no, he's not taking up
13 the time.

14 MR. FREIDIN: All right. That is fine.

15 THE CHAIRMAN: But we don't have to go
16 through it if you are content, Mr. Hanna, that that
17 answer stands.

18 MR. HANNA: Q. Let me ask you it this
19 way, Mr. Duncanson. If the cost that the industry
20 faced in terms of virgin fiber was -- I believe the
21 number you used was \$157 per, was it tonne or cubic
22 metre?

23 A. It was per tonne of finished product,
24 yes.

25 Q. If that was -- instead of \$157 was

1 double that, would that affect what would be deemed to
2 be economic supply of recycled fiber?

3 A. Yes, that would be the case.

4 Q. So that the economics of recycling
5 are tied to the cost of the virgin fiber, at least in
6 part?

7 A. Well, I think the decision to use
8 recycled fiber is tied to the cost of virgin fiber
9 cost.

10 Q. Now, can the Ministry affect the
11 economics of recycling by various means such as: 1)
12 virgin material taxes?

13 A. I think the answer to that would be
14 very similar in Mr. Armson's case. We are talking -- I
15 don't know if the Ministry itself can do that where
16 it's a government -- overall government decision.

17 Q. Well, let's accept then, can the
18 government affect virgin material costs through taxes
19 of that nature such as stumpage fees?

20 A. Yes.

21 Q. And through land rental costs?

22 A. Yes.

23 Q. Can the Ministry provide economic
24 incentives as opposed to penalties, incentives in terms
25 of recycled materials?

1 A. Again, that is -- I refer to Mr.
2 Armson's answer to your question.

3 THE CHAIRMAN: Mr. Hanna, without
4 interfering with your progressing along this road,
5 don't we have to sort of determine some of those
6 questions before we get into it in a major way; i.e.,
7 the applicant/proponent before the Board is the
8 Ministry of Natural Resources, if in fact some of these
9 things you are talking about are not within the
10 Ministry's control, it is a government policy or the
11 purview of another ministry, for example, then it
12 really doesn't, in terms of this proponent, have the
13 ability to influence the things you are questioning,
14 and this Board may likewise have very limited
15 jurisdiction to even -- well, (a) to impose anything;
16 and, (b) perhaps even to suggest something depending on
17 who has the ultimate control, whether it's fiscal
18 policy of the government as a whole, whether it's
19 Treasury and Economics, whether it's MITT or whether
20 it's a decision of the Cabinet as a whole.

21 So I mean, these questions I think are
22 tied into that to some extent, and if their evidence is
23 that MNR does not have the power to control these
24 things by themselves, then what is the point of
25 pursuing or going down that road to any great extent?

1 MR. HANNA: Perhaps I can answer that in
2 two ways, Mr. Chairman. First of all, what I am
3 attempting to do is determine those that are clearly
4 within the purview of the Ministry itself, I think that
5 is a reasonable thing to do.

6 The second part is that I can tell you
7 that I am in the process of trying to go through the
8 jurisprudence or have someone do it on my behalf to
9 find out what in fact -- whether the Ministry, because
10 it is an arm of the government, whether the proponent
11 is seen as being that agency, per se, or is the
12 government per se. In other words, what are reasonable
13 alternatives when you have a government agency come
14 forward. Do you follow what I mean?

15 I am not sure, I can't answer that
16 question at this time. And I understand your point, I
17 think it's a reasonable point. I can't answer, I am
18 not prepared at this time to give you the answer to
19 that, and I am not planning going down a long drawn-out
20 path on this, but it is a point that has to be
21 resolved.

22 I agree with you wholeheartedly that it's
23 an important point to know whether the proponent is the
24 agency or as an arm of the government is the government
25 that in fact is the proponent; and, therefore, those

1 are reasonable alternatives.

2 THE CHAIRMAN: All right. Well, I think
3 it really boils down to a question of law and
4 jurisdiction, but if you want to proceed by asking this
5 panel what their view of the Ministry's powers are, I
6 suppose to a limited extent that is acceptable.

7 MR. HANNA: I think that is what I was
8 trying to say. I agree with you, I think it's a matter
9 of law and jurisdiction and that is why I say, it's
10 being investigated at the present time and I am not --
11 I just don't have that knowledge available to me at the
12 present time.

13 THE CHAIRMAN: Okay.

14 MR. HANNA: Q. In terms of recycling,
15 again the levers, Mr. Duncanson, one of the barriers
16 that has been cited to recycling is the awareness of
17 the -- I'll not say the public, but the actual people
18 who are going to take the activity in a role that can
19 be seen in that circumstance as co-ordination of
20 management, technology transfer, a whole variety of
21 things that take place.

22 Do you see that as a lever that could be
23 used in this particular case?

24 MR. DUNCANSON: A. I guess so. I am
25 still, you know, kind of questioning where -- you know,

1 what context your questions are worded at a pretty well
2 motherhood statement, in my view.

3 Q. Well, these are 'alternatives to'
4 evaluation?

5 A. I think -- you know, I think a lot of
6 your questions are answered on a day-to-day basis. I
7 mean recycling, sure, may be the topic under discussion
8 right now, but the mills have evolved and the industry
9 has evolved with technological changes that have
10 constantly changed their demands on roundwood and the
11 wood that they take into the mill.

12 Mr. Armson referred to a couple but, you
13 know, if you want further examples, in Panel 5 we went
14 through quite a bit of detail on the evolution of
15 thermal-mechanical pulping and the fact of using 90 per
16 cent yield rather than 80 per cent yield.

17 Q. I don't want to go back through that.
18 I appreciate the evidence you gave in Panel 5 and the
19 reason I am asking these questions, at least for your
20 purpose - I think maybe other people understand - is
21 that we are looking at what suite of alternatives or
22 alternative methods or 'alternatives to' may be
23 reasonable for the Ministry to consider and whether or
24 not the Ministry should take an active or passive role,
25 and that's not to go to back through that, but that is

1 the whole gist of these questions.

2 And would not another way to deal with
3 the amount of recycling be legislation; in fact, is
4 that not the example that you gave in the U.S.?

5 A. Okay. That is legislation to the end
6 consumer.

7 Well, they are not legislating the
8 Abitibis and saying that you have to produce
9 recyclable, they are legislating the end consumers, in
10 that particular case the publishers and saying you must
11 publish this paper on "x" per cent of recycled content.

12 THE CHAIRMAN: Well, that is clearly
13 outside the control of just MNR. I don't even think we
14 have to debate that one.

15 MR. HANNA: Yes, Mr. Chairman, I will
16 agree with that.

17 Q. But there is legislation that the
18 Ministry could bring forward that says: Abitibi, you
19 must have a certain proportion of recycled fiber in
20 your feedstock in order to be able to cut timber on
21 Crown land?

22 MR. DUNCANSON: A. I guess --
23 theoretically I guess government can do that, I don't
24 think you would have much of a paper industry left if
25 they did that, in different jurisdictions.

1 Q. So that of those factors, the one
2 that we decide most clearly falls within the Ministry's
3 mandate is they certainly can control, to a certain
4 extent, the cost of virgin material from Crown land?

5 MR. DUNCANSON: A. Yes.

6 Q. And we have determined that that
7 would have an impact on the recycled proportion?

8 A. Yes.

9 Q. Now, Mr. Duncanson, I believe you
10 were involved and have some knowledge of the economics
11 of the forest industry. I believe there has been
12 evidence given that the industry is, if you will, a
13 price-taker rather than a price-setter; are you
14 familiar with that?

15 A. Can you refer to a specific...

16 Q. Well, perhaps I will say it this way:
17 That because the markets they compete in are
18 international markets and the proportion of the supply
19 that they control is not a monopoly, the prices are set
20 internationally and they have to take the price, the
21 going price, they haven't got control over that price?

22 A. It is a free market system and you
23 are dealing with supply/demand economics. It's a very
24 cyclical business and in some instances producers can
25 increase prices, as evidenced by pulp in some 14

1 consecutive price increases. I wouldn't say that the
2 market is basically telling -- I wouldn't say that the
3 international world is saying you can't have anymore
4 increases, the consumers aren't saying you can't have
5 anymore increases. It is a free system. Sometimes you
6 have control, sometimes, you know, there are times
7 where prices do come under competitive pressure.

8 MR. HANNA: Mr. Chairman, I think I am
9 going to move -- not follow that line of questioning
10 further. I think the forest industry is bringing
11 forward people who can respond to this more
12 appropriately, and I think I will hold those questions
13 until that time.

14 THE CHAIRMAN: Very well.

15 MR. HANNA: Q. Mr. Bisschop, I would
16 like to come back to you and move on to a different
17 subject at this time; and, that is, the evaluation
18 process that was used in the 'alternatives to'
19 analysis.

20 Perhaps maybe I should ask this question
21 to Dr. Allin, I am not sure which of the two of you
22 should answer this question. I am referring to Table 1
23 on page 91 of the witness statement, Exhibit 984.

24 MR. BISSCHOP: A. Mr. Hanna, I should
25 advise that if you have general questions about the

1 evaluation process Mr. Clark is our key witness on that
2 and the others deal with specifics. I wasn't part of
3 the evaluation itself, nor did I give direct evidence
4 on how that worked.

5 Q. I wasn't trying to pick on you.

6 A. I was trying to be helpful, so that
7 you didn't ask me questions I couldn't answer.

8 Q. Thank you.

9 DR. EULER: A. We all feel that way.

10 MR. HANNA: Q. Dr. Allin, perhaps then
11 you can tell me. The ranks, the overall ranks at the
12 bottom, how precisely were they arrived at? How do I
13 go through this table and arrive at those ranks?

14 DR. ALLIN: A. I guess I'm not sure what
15 you mean how precisely they were arrived at.

16 Q. Well, maybe to tell you quite
17 briefly, I looked at this and looked at pluses and
18 minuses, and lows and very lows, and mediums and very
19 highs, and middles and whatever, and depending on how I
20 mixed and matched those I could end up with different
21 rankings, assumptions I made about how significant
22 those were, how they were aggregated. And I am
23 interested in knowing how you were able to aggregate
24 the impacts and types to arrive at the rank, the
25 overall rank?

1 A. Well, one of the things that we had
2 to deal with was some uncertainty about the direction
3 of effects in given situations. Those categories of
4 effects that are identified as having a positive or
5 negative type of impact were treated as if they were
6 negative and, as I think I indicated in my
7 evidence-in-chief, that was, we felt, appropriate in
8 that it was consistent with our earlier evidence about
9 how we deal with uncertainty through using a
10 conservative approach and trying to minimize change.

11 So that was one thing. Those pluses and
12 minuses, in effect, become minuses, so we treated all
13 effects or all impacts as if they were negative. So
14 that's one thing.

15 The other thing is that in looking at the
16 overall impact of the various alternatives, for the
17 most part we were not faced with particularly difficult
18 decisions about differences in impacts with respect to
19 different effects, if I am making myself clear.
20 Basically, those alternatives that ranked higher than
21 other alternatives basically ranked higher for almost
22 all effects; in other words, there weren't major
23 discrepancies among the alternatives in terms of some
24 alternatives being better for some effects and other
25 alternatives being better for other effects.

1 And I guess the essence of that is that
2 one could fairly readily look at the impacts as they
3 are arrayed there and come to conclusions as to the
4 overall ranking.

5 Q. Now, this matter of being
6 conservative with respect to positive or negative
7 impacts, in terms of achieving at least the overall
8 objective of the Environmental Assessment Act in terms
9 of betterment to the people, is it not possible that by
10 ignoring the possibly beneficial effects that, in fact,
11 we could pick an alternative that didn't lead to the
12 achievement of that purpose? Is that really a
13 conservative value?

14 A. I think it generally is. If you look
15 for example at, let's say nutrient inputs, input of
16 additional nutrients as a result of, say, timber
17 harvest in some cases could be beneficial; in some
18 cases it could be detrimental, and that's why we
19 indicate the positive and negative.

20 But in the general situation there is
21 uncertainty about the point at which the positive
22 effect would change to a negative effect, and there is
23 also uncertainty about the existing phosphorus level,
24 for example, in a lake. So that where the phosphorus
25 level is already marginally high in terms of the

1 eutrophication effect, even a small amount of nutrients
2 could in fact be negative if they were added as a
3 result of the harvest.

4 So it is for that kind of uncertainty
5 that we felt the most appropriate way to go was to
6 treat them as if they were negative.

7 Q. But in order to actually arrive at
8 that conclusion and the one you've used with the lake
9 and phosphorus, one would actually have to undertake a
10 phosphorus budget for that lake, look at the fishery,
11 look at the site conditions, a whole variety of very
12 site-specific types of analysis you would have to do to
13 arrive at that conclusion?

14 A. For a particular lake, yes.

15 Q. And it may well be that if that was
16 undertaken on a case-by-case basis - and I certainly
17 understand the magnitude and complexity of undertaking
18 that - but it could well turn out that one of the
19 alternatives could be far better than the other?

20 It could be that we have a lot of
21 mesotrophic lakes that are warm water fisheries that
22 would benefit by some additional -- a moderate amount
23 of additional nutrient.

24 A. That's possible, but I think, again,
25 that introduces the element of human value judgments

1 that we referred to earlier.

2 We basically take the position that we do
3 not want to shift the trophic status of a lake to any
4 significant extent through the addition of nutrients,
5 even though in some cases you might end up with a
6 somewhat more productive fishery and you might end up
7 with species -- fish species that would be different
8 and would be perhaps considered more desirable by some
9 people.

10 And I guess the example I'm basically
11 thinking of is cold water and warm water fish
12 communities. We have taken the position that we don't
13 want to shift that fish community from cold water to
14 warm water and that basically means that we try to
15 minimize inputs of nutrients as best we can.

16 Q. Well, given that underlying
17 assumption, why do I see anywhere on the graph or table
18 a positive beside nutrient impact?

19 A. It was basically included, I guess
20 for the sake of completeness, to recognize the fact
21 that in some circumstances nutrient inputs could be
22 positive and I guess just to indicate that at least it
23 was considered during the analysis. It was something
24 we had to think about and how to deal with.

25 Q. And I suspect your comments apply

1 also in the matter of access, in fact perhaps even more
2 so in the matter of access?

3 A. In what respect?

4 Q. Other values and making some
5 determination of what is and is not appropriate?

6 A. I guess I'm not quite with you on
7 that one.

8 Q. Well, I think your statement was that
9 implicit in your nutrient assessment was that you had
10 to take into account human values. I'm asking you,
11 does that not also apply to the matter of access, or
12 even more so to the matter of access?

13 A. Well, yes, it does apply to the
14 matter of access and, as I indicated, we essentially
15 considered any significant reduction of fish
16 populations as an impairment or essentially a bad
17 thing.

18 Q. Can you explain to me why you
19 assigned ranks rather than scores, if you understand
20 the difference, between these alternatives?

21 A. Yes. We felt that there was no good
22 scientific basis to assign numerical scores of I think
23 the sort you are referring to and, also, there was
24 really no need do that. It was sufficient, in our
25 view, to simply indicate that the impact of one

1 alternative with respect to a certain kind of effect
2 was larger than for another alternative.

3 Q. If, as a for instance, it was deemed
4 that this type of comparison would be necessary, the
5 alternatives might be different, but this type of a
6 comparison might be appropriate on a timber management
7 plan by timber management plan basis, is it not
8 conceivable that you could end up with a choice of
9 alternatives that is not as, supposedly at least,
10 clearcut as the evidence of this panel has been in
11 terms of these alternatives at a provincial level?

12 A. I suppose it's possible on an
13 individual forest management unit level, but I would
14 think that the conclusions that we reached here would
15 apply very generally across the area of the
16 undertaking. I mean, I wouldn't expect that these
17 results would change very significantly if you looked
18 at smaller levels of analysis.

19 Q. Have you undertaken that sort of
20 analysis to confirm that opinion?

21 A. No. I guess the kind of situation
22 I'mm thinking of is that we considered effects of
23 wildfire to be fairly significant here, at least with
24 respect to alternative A, and I suppose it's possible
25 in some forest management units that you would not have

1 those fire effects, at least within a short or medium
2 term, and so that that might change the balance of
3 effects. I'm not sure it would change the overall
4 rank, but it would influence the ranking.

5 But I think that's one of the reasons, as
6 Dr. Euler indicated earlier, that you really can't deal
7 with this in this kind of an analysis at a very
8 specific level, you do need to consider the ranking
9 across a broad array of conditions--

10 Q. Why can't --

11 A. --and across the area of the
12 undertaking.

13 Q. Sorry, I don't understand why I
14 couldn't undertake this analysis on an individual
15 timber management area?

16 A. Oh, I think you could, but I'm saying
17 for the purposes of Panel 17 and our analysis here,
18 obviously it would not be possible for us to look at
19 specific units and then aggregate up to a total.

20 Q. Well, I appreciate the logistical
21 constraints you were under, but by the same token you
22 will agree with me that I can construe -- using the
23 numbers that you have in Table 1, by combining the
24 pluses and minuses for the various alternatives, I can
25 construe situations where the preferred alternative is

1 not timber management, just using these alternatives
2 that you have here?

3 A. You mentioned combining positives and
4 negatives and I'm not sure what you meant by that. As
5 I say, we don't do that, we treated them as negative.

6 Q. Well, I understand that, and the
7 reason you did is because you took this conservative
8 assumption because of the problem you were faced with
9 in trying to deal with the length and breadth of the
10 province.

11 A. Right.

12 Q. But given the fact that you've said
13 to us there are situations where a positive -- or a
14 negative might be a positive, then there are
15 site-specific conditions whereby I could make positives
16 negatives and negatives positives.

17 So I can look at possible combinations of
18 this, and supposedly there is the potential for a
19 site-specific condition such that I might have an
20 alternate preferred -- a different preferred
21 alternative, just using your numbers - I hate to use
22 the word numbers - your evaluation?

23 A. I'm not sure whether I would draw
24 that conclusion as to the overall impact, but certainly
25 if we look at a specific effect like nutrients, if you

1 had information on all of the lakes within that forest
2 management unit so that you could decide, in fact,
3 whether additional nutrient inputs might be positive as
4 opposed to negative, then that might influence your
5 rating with respect to nutrients; yes, that's true.

6 Q. On page 24 of the EA - perhaps Mr.
7 Clark might be the person to answer this or Dr. Allin
8 or I'm not sure who - there is a statement on line 33.
9 I believe we are here looking at the do-nothing
10 alternative which I believe is the alternative A that
11 the Board has heard about.

12 MR. FREIDIN: Which line?

13 MR. HANNA: Q. It's the last paragraph
14 there and the statement says:

15 "For the wood importation option,
16 which implies no harvest or renewal
17 activities in the province, obviously
18 none of the effects on the natural
19 environment which are described in Part
20 I, Chapter 11 would occur. "

21 It seems like a pretty boldfaced
22 statement to me. And I look at page 71 of your witness
23 statement, which is Table 5, and I look at alternative
24 A which I believe corresponds to what's being discussed
25 here, and I look under natural environment I see it's

1 ranked 3.

2 Maybe I am missing something, but there
3 seems to be a direct contradiction between the
4 statement in the environmental assessment and the
5 statement in your witness statement?

6 MR. CLARK: A. I think I may be able to
7 speak to that in a general way. I think the reference
8 that you are referring to refers to the effects of
9 timber management.

10 Q. I'm sorry, which text, Mr. Clark?

11 A. The reference on page 24, line 33:

12 "...obviously none of the effects on the
13 natural environment are described."

14 And I think you have to assume that that
15 means the effects of timber management which are
16 described -- on the natural environment which are
17 described in Part I, whereas in alternative A there is
18 no timber management.

19 MRS. KOVEN: Mr. Clark, do you mean to
20 say that there are increased pressures to exploit
21 private lands, therefore, the effects on the natural
22 environment would probably increase in those areas?
23 That doesn't apply to the import side of alternative A.

24 MR. CLARK: I'm a little confused by your
25 question.

1 MRS. KOVEN: Well, we are looking at
2 alternative A--

3 MR. CLARK: Right.

4 MRS. KOVEN: --and I thought that natural
5 environmental effects would pertain to the use of
6 private land as opposed to CMUs.

7 MR. CLARK: I think the major --

8 MR. BISSCHOP: Sorry, Ms. Koven, maybe I
9 can help. That statement deals specifically with wood
10 import, okay. The next statement deals with patented
11 land and the first statement is very simple. If we
12 import wood, obviously we don't carry out any
13 activities on Crown land, therefore, none of the
14 effects which we have described for timber management
15 in Chapter 11 would occur. I think that's a reasonable
16 statement to make.

17 The next statement then goes on to speak
18 about the patented land side of it, private land as a
19 source.

20 MRS. KOVEN: I see.

21 MR. HANNA: Q. Mr. Bisschop, if the text
22 of the two are so significantly different, why would
23 you combine the two in your alternative? Why would we
24 not have an alternative import, an alternative private
25 land perhaps?

1 MR. BISSCHOP: A. Those are two separate
2 possibilities that could have been considered. I think
3 there is an argument too that then says: Why did you
4 consider -- why did you even define private land and
5 import under alternative A at all, why not just
6 consider do-nothing, period.

7 We attempted to address the contribution
8 to wood supply that might be achieved by doing nothing
9 on Crown lands and two possible sources would be
10 importing from outside the jurisdiction of the province
11 or from obtaining supplies from private land within the
12 province. We couldn't look at them separately.

13 MR. HANNA: Mr. Chairman, I think I am
14 going to move on now to the second component of this
15 witness statement which has to do with the
16 justification for the Class EA approach. I have
17 several questions on that and then two clarifications
18 in the interrogatories, and then I will hopefully be
19 finished.

20 Q. Mr. Bisschop, in your readings as an
21 environmental planner have you encountered the report
22 by Beanlands and Duinker?

23 MR. BISSCHOP: A. I think I've heard of
24 it as the Beanlands Report.

25 Q. There are two authors, yes.

1 A. It was done for the federal
2 government?

3 Q. Yes, and for the Census Bureau Office
4 I believe.

5 A. Yes, it is some time ago that I even
6 looked at the document. I'm sure it was produced in
7 the early 80s, I believe.

8 Q. Correct. In '84, '83 something like
9 that. The reason I raise that is simply that they
10 identified a fairly comprehensive or some generic
11 issues that I think plagues EA and still plaguing EA.
12 I'm looking at how those issues might possibly be dealt
13 with through this Class EA planning process.

14 I am just going to -- I want to deal with
15 each one individually and see if there is some remedy
16 or at least some partial remedy through this Class EA
17 approach for dealing with them.

18 Now, the one issue they identified was
19 what they call I believe selection of important
20 attributes, what I call criteria, what has to be
21 measured, has to be evaluated. Now, in your experience
22 in dealing with environmental assessment have you
23 encountered situations where deciding on what is the
24 appropriate measure to use or isn't?

25 A. I'm afraid I'm going to need some

1 context for the question.

2 Q. Well, perhaps specifically this
3 hearing, we've heard that there is some - I forget the
4 number, I know you can correct me here - but it is in
5 the 100s of vertebrate species, terrestrial species on
6 the landbase, you can't go out and collect information
7 on all of these species, so we would have to select
8 several - I think that's one of the thrusts of the
9 featured species approach - that will be used, as it
10 will, as surrogates to decide upon the level of impact
11 and its acceptability. So you had to screen down what
12 was your key attribute you were going to measure.

13 A. I understand for that specific
14 instance the context, but I still have some difficulty
15 understanding more broadly what you're getting at.

16 Q. Well, Mr. Chairman, I think made
17 reference to the plight that some proponents have found
18 themselves in going to the EA Branch and receiving what
19 I think some people term a shopping list of factors to
20 consider.

21 MR. FREIDIN: Mr. Chairman, I am not too
22 sure we are here to correct the practice of the
23 Environmental Assessment Branch. I think if he wants
24 to know what criteria was used in this particular
25 environmental assessment and then either cross-examine

1 on it or lead evidence as to the appropriateness of
2 that, I think that's fair game.

3 MR. HANNA: I'm not planning to send a
4 message to the EA Branch, Mr. Chairman, it is more in
5 the sense of seeing if -- that one of the
6 justifications for this class environmental assessment
7 planning process is to expedite the selection of key
8 attributes that need to be measured, and if Mr.
9 Bisschop sees that, as an environmental planner, as one
10 of the elements that should be dealt with in setting up
11 this Class EA planning process.

12 THE CHAIRMAN: So what you are asking is
13 whether or not the Class EA approach, its purpose, is
14 to expedite the selection of the criteria that should
15 be used in a planning process, or...?

16 MR. HANNA: Or a way to expedite the
17 process is to provide some direction as to the key
18 attributes that the proponent should use in order to
19 characterize them and evaluate the environment in the
20 context of the Act.

21 THE CHAIRMAN: I don't understand why the
22 Class EA approach does that as opposed to that is what
23 the proponent does in terms of putting forward their
24 Class EA assessment.

25 That is what the proponent did in this

1 case: It decided, for whatever reasons, we can't look
2 at all the terrestrial land species, therefore, the
3 only way we are going to appropriately evaluate
4 environmental impacts from the activities and the
5 timber management approach with respect to those
6 activities are to include certain species, and those
7 species are going to represent, to the extent that they
8 can, other species that we can't collect the data on
9 individually. But that is a factual thing, that is a
10 factual thing that they did in this Class EA.

11 Now, I am not sure I understand your
12 question as saying -- or asking rather, whether or not
13 a Class EA approach is meant to expedite the ability of
14 somebody to do that. Is that not what you just asked
15 essentially?

16 Why don't you rephrase your question,
17 maybe I am not understanding your question entirely in
18 the context of the way you have put it, vis-a-vis the
19 Class EA approach.

20 MR. HANNA: Q. Mr. Bisschop, as I
21 understand your evidence, one of the reasons that you
22 selected the Class EA approach was to develop an
23 administrative efficiency to preparing the timber
24 management plans across the province; is that correct?

25 MR. BISSCHOP: A. That is one of the

1 considerations, yes.

2 Q. And one of the administrative hurdles
3 that one has to deal with in preparing the plan is what
4 measures or what factors you are going to take into
5 consideration, in Beanland's and Duinker's terms, what
6 important attributes one is going to actually measure
7 and use as a basis for your evaluation?

8 THE CHAIRMAN: In preparing the
9 individual plans?

10 MR. HANNA: Correct, Mr. Chairman.

11 THE CHAIRMAN: Not the Class EA.

12 MR. HANNA: No.

13 THE CHAIRMAN: The individual plans?

14 MR. HANNA: Correct.

15 MR. BISSCHOP: If I could use our process
16 as an example perhaps to try to address the question.
17 We have indicated that, okay, within that process we
18 have singled out, for example, roads and operations in
19 areas where there are other values for, what I would
20 call I guess, comprehensive treatment in which we
21 outlined the kind of analysis that would be required to
22 come to a decision about activities related to those
23 two items and, in that sense, there are important
24 attributes that have been defined for that analysis.

25 MR. HANNA: Q. And so one of the ways

1 that this Board can assist you in developing that
2 administrative efficiency would be to say, at a minimum
3 at least, these are the specific factors that should be
4 considered, specific attributes of the environment that
5 you should consider in developing your plan.

6 And I use the terrestrial and wildlife
7 one simply as probably the best example where you have
8 got featured species, where it has been used as a
9 surrogate to represent a broad range of attributes that
10 could be argued.

11 On a case-by-case basis, you would look
12 at them all to avoid having to go through that argument
13 each time?

14 A. That's right. We put to the Board
15 what we see as the minimum factors, considerations,
16 whatever and the Board can decide to accept or require
17 further.

18 Q. And so as an environmental planner
19 you would see benefit in trying to make that list as
20 administratively efficient as possible and yet as
21 comprehensive as possible?

22 A. Yes, particularly for an activity
23 such as timber management which is carried out across a
24 large area of the province in various management units,
25 various conditions, have some kind of efficiency to the

1 the way that kind of process is applied across the
2 province.

3 Q. Another generic issue that Beanland
4 and Duinker discuss - and I only use Beanland and
5 Duinker because it's a comprehensive analysis, I think
6 it's not exclusive to their writings at all - but is
7 the matter of what's called boundary definition,
8 boundaries in terms of space and time.

9 Do you see potential efficiency, and I
10 suppose I could also say in fairness, in terms of a
11 consistent approach in providing direction in terms of
12 space and time boundaries that should be used in
13 developing timber management plans, should we look at
14 one rotation, 20 years, or four rotations to decide
15 upon impacts?

16 A. Yes, and, again, I think we have
17 defined to the Board what we consider those dimensions
18 ought to be.

19 Q. And as an environmental planner you
20 feel that that is an important thing to try and get
21 resolved at the generic level in this type of process?

22 A. Yes, and again I would make the
23 point, particularly for timber management.

24 Q. Another issue that they raise is what
25 is termed the appropriate level of detail or

1 information, appropriate level of detail or
2 information.

3 Even though you select, for example, your
4 featured species and, for lack of argument, as a matter
5 of argument we use moose, you are still faced with how
6 much information you need on moose to be able to
7 produce an acceptable evaluation. Do you agree with
8 that?

9 A. Yes.

10 Q. Do you see some benefit in providing
11 that sort of direction so that the administrative and
12 fairness opportunities in the Class EA approach could
13 be realized?

14 A. Yes. Again, I think as an example I
15 would use the approach that has been taken on the
16 fisheries guidelines where we have set out the minimum
17 information requirements in order to use those
18 guidelines so we have efficiency across the province in
19 terms of the application of those guidelines.

20 Q. Another matter that they raise is the
21 need for explicit impact prediction techniques and some
22 resolution as to what are reasonable impact prediction
23 techniques to use in specific circumstances.

24 Do you see some benefit in standardizing
25 this aspect of the process, at least as far as a

1 minimum requirement goes?

2 A. Well, without getting into the age
3 old debate on weightings and ratings and values, et
4 cetera, I think the approach that we have put forward,
5 and within the context of a Class EA, is the kind of
6 effects that have to be considered at a management unit
7 level, recognizing that across the province the actual
8 occurrence of any of those effects in a particular
9 place at a particular time will vary.

10 So I guess I am saying that it's not so
11 much a matter of the technique that is used as the
12 considerations being taken into account.

13 Q. So you don't feel that there is
14 potential for future debate as to whether or not one
15 way of predicting impacts is more reasonable than
16 another way?

17 You don't see any benefit in trying to
18 resolve that at this time on a generic level?

19 A. It's certainly something that ought
20 to be resolved. I am not -- I guess what I am saying
21 is, I am not sure that the existence and application of
22 some magic formula is going to lessen the potential for
23 debate in any individual situation anyway, so it's more
24 a matter of, I think the way we have expressed it, the
25 kinds of considerations that are taken into account in

1 individual situations and the balancing of all of the
2 considerations in arriving at decisions, and if
3 decisions can be -- the intent is that decisions would
4 take into account all the necessary information to make
5 the decision and that the justification for the
6 decision then will be supportable.

7 Q. I just want to make sure you
8 understand my question. I am not suggesting this is a
9 panacea to resolve the inevitable conflicts that you
10 are faced with in resource management, but there is
11 some sources of conflict that we can deal with and
12 other sources of conflict that we are going to have to
13 resolve on a case-by-case basis.

14 And is not one of the ways that we can
15 resolve what might be termed unnecessary conflict is
16 trying to standardize the information that we use and
17 the way in which we use that information,
18 notwithstanding we still have to deal with the social
19 values side of things, but at least provide the
20 information in a consistent and reasonable way that
21 those social value decisions can be made?

22 A. Yes, I believe our -- that that
23 statement aligns itself in support of the positions
24 that we have put forward to the Board about a process
25 within which decisions would be made.

1 Q. And one element of that process would
2 be at least a minimum set of analytical tools that
3 would be used for impact prediction; not exclusive but
4 certainly a minimum standard?

5 A. I am not sure that we have ever put
6 forward any -- whether we put forward or whether I
7 agree that there has to be a minimum set of tools.

8 I think there has to be consideration of
9 whatever values and concerns are important for that
10 particular instance and there has to be a vehicle by
11 which -- a means by which those kinds of concerns are
12 resolved, and I think the essential elements of the
13 process that we have described provide for that
14 resolution of concerns.

15 So I don't really -- I think we may use a
16 host of tools to come at some of those decisions, but I
17 don't think that we have ever indicated that there is a
18 minimum set of tools that ought to exist or that any
19 particular one ought to be applied.

20 Q. So is it fair then to take your
21 statement and say that the application and the
22 appropriateness of whatever tools are out there will be
23 decided on a timber management plan by timber
24 management plan basis and will have to be argued in
25 each case?

1 A. In fact, I wouldn't so much put it at
2 a timber management plan by plan basis as an individual
3 situation by individual situation basis. And if there
4 is debate about the tool that is used and the decisions
5 that come out of it at that time, that is something
6 that the process contends with.

7 Q. You are talking now the process at
8 the individual timber management plan basis, that's not
9 this process?

10 A. That's right. No, at level of
11 individual management plans.

12 Q. Another matter that is raised is the
13 matter of an evaluation, a formal evaluation procedure.
14 And I think some of the answers you have just given to
15 my last set of questions may in fact have been
16 impinging on this; and, that is, providing or deciding
17 on an acceptable way or appropriate way to make, at
18 least to present the inevitable tradeoff decisions that
19 in view of resource management and environmental
20 assessment per se?

21 MR. CASSIDY: What was that question?

22 Q. Do you see advantage in developing --
23 is there a way to minimize the conflict by developing
24 or providing some at least direction in terms of what
25 is an appropriate evaluation framework to make those

1 tradeoffs; not just public consultation, but the actual
2 structure of: Here's how we make the tradeoffs or at
3 least how we rationalize them?

4 MR. BISSCHOP: A. I think in the -- if I
5 could use as an example again our planning process for
6 areas of concern, we have indicated the process that
7 needs to be applied, the documentation that must in
8 every instance support the application of that process,
9 and it's through that documentation that the
10 decision-making is traceable, and I think that
11 traceability aspect of it all is the key in terms of,
12 if you will, the format of some kind of evaluation
13 procedure.

14 In our process we have set out what needs
15 to be considered, we have indicated documentation
16 requirements, it is through following the documentation
17 of that process in any individual situation that there
18 is formality to procedure.

19 THE CHAIRMAN: Mr. Hanna, isn't the long
20 and the short of it is: The Ministry has put forward
21 their planning process as to how they see these
22 decisions being made within what framework and how
23 those decisions are to be evaluated within that
24 framework and it's up to the other parties, such as
25 yourself and your client if you disagree with the

1 approach taken by the Ministry, to put forward your
2 suggestions for a better method either in terms of
3 conditions in terms of conditions of approval with
4 respect to the Ministry's approach, or by raising
5 before the Board, within limits of relevancy, some
6 other approach?

7 The Board then looks at the entire case,
8 the input of your client as well as any other party
9 before the Board, evaluates it against what the
10 Ministry has put forward, probably throws into the
11 hopper some of its own interpretations of all that
12 evidence and comes out with a decision at the end as to
13 what it deems to be appropriate.

14 Isn't that the process we are involved
15 in?

16 MR. HANNA: Certainly that is my
17 understanding, Mr. Chairman. My questions were not
18 intended to explore the merits or disadvantages of the
19 approach, merely to determine Mr. Bisschop's opinion as
20 an environmental planner as to what elements should
21 constitute an Class EA, not whether the ones the
22 Ministry has come forward with are best or not.

23 And that was the line of questioning, but
24 I am finished with this. I certainly accept the
25 proposition you put forward.

1 Mr. Chairman, I am just trying to make a
2 decision whether to deal with interrogatories or one
3 other matter. Could I just have a moment to speak to
4 Dr. Quinney?

5 THE CHAIRMAN: How long do you expect to
6 be yet?

7 MR. HANNA: I would think about three
8 quarters of an hour, something in that order. I
9 wouldn't think it's going to be much more than that.

10 THE CHAIRMAN: Okay. We will finish off
11 with your side of the case prior to the lunch break.

12 MR. HANNA: My side of the case. I
13 haven't given that yet to you, Mr. Chairman. My
14 cross-examination.

15 MR. CASSIDY: That would really move the
16 hearing along.

17 THE CHAIRMAN: I guess that was being
18 optimistic. With your cross-examination.

19 ---Discussion off the record

20 MR. HANNA: Q. I am not quite sure who
21 on the panel I should address these questions to, so I
22 will leave them as undirected and whoever can respond
23 is appropriate. There is several matters in our
24 statement of issues that I would just like to get
25 clarification on, I think they should be fairly short.

1 The first has to deal with paragraph 3 in
2 your witness statement, Exhibit 984, on page 10. We
3 haven't really touched on this, although it has been
4 there in the background in our previous discussions.

5 There is mention in paragraph 3 about the
6 role that the forest production policy will play in the
7 process and I wanted to understand, given the
8 discussion we've had in terms of 'alternatives to' and
9 the role that recycling and import and demand
10 management might play, how the forest production policy
11 interfaces with that.

12 So I am not too sure who on the panel is
13 best to answer that.

14 MR. CLARK: A. I guess -- well, there is
15 a number of approaches to the TPP that are currently
16 being reviewed by the Minister at this time and no
17 particular decision has been made on how we anticipate
18 approaching that or when a draft TPP would be released
19 for discussion.

20 Q. Mr. Clark, just to make clear, I am
21 not probing to see what the new forest production
22 policy will look like or anything of that nature, I am
23 talking about a process question here.

24 In other words, how does that policy
25 interface with the 'alternatives to' evaluation in

1 number, but timber management is not one of them.

2 Q. But implicit in the timber management
3 proposal that you have come forward with, clearly
4 recycling is a part of that; it's not timber management
5 exclusively, it's not raw fiber exclusively?

6 A. But I think it has been made clear
7 that -- that is correct, but the only area over which
8 the Ministry has a mandate in terms of the Crown lands
9 we are talking about is over the timber management
10 activity.

11 Q. Well, I beg to differ there, Mr.
12 Armson. I think with my discussion with Mr. Donaldson,
13 he has indicated --

14 MS. BLASTORAH: Duncanson.

15 MR. HANNA: Q. I am sorry, excuse me,
16 Mr. Duncanson, that the Ministry does have an influence
17 over the proportion or potential proportion of recycled
18 fiber through the control or partial control of the
19 cost of virgin fiber?

20 MR. ARMSON: A. Well, the Ministry, as I
21 believe I explained in direct in answer to the Board's
22 concern about the charges that the industry paid for
23 wood, specifically stumpage and I explained the origin
24 basis of those charges.

25 Q. I have read that.

1 A. Yes. And the Ministry -- our
2 government may change those levels and they may change
3 those with respect to any number of factors, but that
4 is not what I am really talking about.

5 Q. But my question here, Mr. Armson, was
6 very much a process-oriented question; in other words,
7 at what point in the process, the planning process for
8 an individual timber management plan will these be
9 taken into account, the recycled proportion, the import
10 proportion, et cetera, and what role will the forest
11 production policy play in the determination of the
12 appropriate proportions?

13 A. Well, to answer your first question,
14 I made it clear that at the management unit level it is
15 not reasonable, in my opinion, to expect the unit
16 forester or the person preparing the plan to have in
17 some way an ability to assess the impact of recycling
18 on that specific area.

19 What will happen is that the impact of
20 recycling as it applies to the particular mill's region
21 or area will in fact back down into there and be
22 reflected in the demand by the mills who are using wood
23 from that particular unit, and that can be related then
24 to the maximum allowable depletion which is calculated.

25 THE CHAIRMAN: Which then in turn relates

1 back to the forest production policy?

2 MR. ARMSON: That is correct, the forest
3 production policy at a provincial level can, yes, take
4 into account the impact.

5 And I think Mr. Duncanson has made it
6 clear from the numbers he has given what -- at the
7 provincial level in terms of the amount of material and
8 the equivalent that that would represent in terms of
9 solid roundwood. He has already given that evidence as
10 to those -- that magnitude and, yes, at the provincial
11 level in developing policy those numbers I would think
12 would be highly relevant.

13 MR. HANNA: Well, Mr. Chairman, I don't
14 want to go back. We've been through that and I'll have
15 to deal with that elsewhere.

16 Q. The last matter I would like to deal
17 with was actually a subject of an interrogatory, I
18 believe it's Interrogatory 43. It's the last page in
19 Exhibit 1007, and I believe it's referring to the
20 amending process that is described on page 120 of the
21 Exhibit 984.

22 Mr. Bisschop, should I direct these
23 questions to you?

24 MR. BISSCHOP: A. Yes.

25 Q. And Mr. Kennedy has, on several

1 occasions, indicated to the Board that, the euphamism
2 used here I believe is, forest land drainage is not a
3 method currently for which approval is being asked for
4 from this Board.

5 Now, in the event that forest land
6 drainage or wetland drainage, whatever the appropriate
7 terminology might be, was to be considered by the
8 Ministry as something they would like to practice
9 rather than on a research basis, as is currently going
10 on at an operational level, how would you see the
11 amendment procedure kicking in and what criteria would
12 be used to decide what level of amendment would be
13 necessary?

14 A. Just as an introduction, I hope that
15 there is no confusion here between this amending
16 procedure and the amendment procedure for timber
17 management plans. This is something very separate.

18 Q. Just so I understand, we are talking
19 about the amendment procedure here for this class
20 environmental assessment?

21 A. That's right.

22 Q. Yes.

23 A. So we have, if I understood your
24 question -- or heard or understood your question
25 correctly, you referred to category of amendment.

1 MR. FREIDIN: He said what level of
2 amendment would be necessary, were his words.

3 MR. HANNA: Q. What criteria would be
4 used to decide, on that level, the appropriate
5 amendment procedure?

6 MR. BISSCHOP: A. Maybe I should just go
7 back and explain how we see this amendment procedure
8 happening. No matter what we would seek to change
9 through an amendment to the approval of the
10 undertaking, we would, MNR would make a request for
11 that change.

12 So in this case, if we sought to add an
13 additional -- really an additional alternative method
14 to carry out the activity of, I believe in this case it
15 would be site preparation, we would request that that
16 additional alternative method be added to the
17 undertaking. The procedure then outlined on page 121
18 of Exhibit 984 describes how the Ministry of the
19 Environment then would process that request.

20 And I'm not sure that there is anything
21 more involved in that in terms of the kinds of factors
22 that come into consideration in reviewing and
23 responding to that request.

24 Q. It is my understanding reading that
25 that you would go forward with the information with

1 some recommendation as to the appropriate amendment
2 procedure that you would see; is that correct?

3 You would make some suggestion to the
4 Minister of the Environment as to whether you felt it
5 was - I am not familiar with all the terms - a minor or
6 major amendment?

7 A. Again, that's one of the points I
8 wanted to make. We are not talking here about the
9 category of amendment, we are saying: We seek this
10 amendment to the approval of the undertaking, here is
11 our rationale - I am reading on page 121, the first
12 full paragraph - here is our rationale for that
13 request, in this case this is a new method of carrying
14 out site preparation that we wish to employ, we provide
15 explanation in support of the advisability of
16 permitting that activity to occur, and we would
17 recommend the form of the review which should be
18 undertaken, and by that it's meant that we would
19 recommend what kind of external review outside the
20 Ministry of the Environment might be advisable, what
21 kind of a public review we felt might be advisable, and
22 on the basis of MNR's recommendations to the Ministry
23 of the Environment, the Minister would make some
24 decision about the extent of the review.

25 THE CHAIRMAN: Isn't the key, Mr. Hanna,

1 that it is within the discretion of the Minister of the
2 Environment as to what form that review takes and as to
3 whether or not the Minister may in fact even request a
4 separate and a new environmental assessment?

5 MR. HANNA: Yes, I appreciate that. I
6 think by the same token, Mr. Chairman, there is the
7 potential for this Board to, in its order, include some
8 mandatory conditions for that approval process also.
9 In other words, the Board could say: We feel that it
10 is important that there be public notification of
11 amendments, actually that's fully within the
12 capabilities of this Board.

13 THE CHAIRMAN: We could specify that MNR
14 in requesting an amendment of any kind must notify the
15 public in such and such a manner.

16 MR. HANNA: Right.

17 THE CHAIRMAN: Having done that, I think
18 it is outside the jurisdiction of this Board to say
19 what the Minister of the Environment will do with that
20 request for amendment, it is totally within his
21 discretion under the provisions of the Environmental
22 Assessment Act and the regulations.

23 MR. HANNA: I agree with that, Mr.
24 Chairman. One of the reasons I am leading these
25 questions is simply to determine if there is compulsory

1 notification in the proposal that the Ministry is
2 coming forward at the present time and, in this
3 particular case, how would members of the public like
4 my client have some assurance that if this were to be
5 brought forward that they would have appropriate notice
6 of it and have appropriate opportunities --

7 THE CHAIRMAN: That's either dealt with
8 by the Ministry in their own suggested terms and
9 conditions, in your suggested amendments to those terms
10 and conditions; i.e., your own, or in terms of the
11 evidence that you want to adduce in your own case.

12 MR. FREIDIN: I'm not sure whether Mr.
13 Hanna was aware or read that part of the transcript
14 where in fact we agreed to a request from the Ministry
15 of the Environment that when any request for amendment
16 was received by the Minister of the Environment, a
17 request for amendment of term and condition 59.

18 In fact, if there was any intention or
19 belief that that would be approved, that there would be
20 a public notice to all required people and there would
21 be a period of time in which they can make
22 representations to the Minister of the Environment.
23 The Minister of the Environment's counsel agreed that
24 the term and condition to that effect was satisfactory,
25 so...

1 THE CHAIRMAN: Well, also counsel for the
2 Minister of the Environment indicated, I believe, Ms.
3 Seaborn, that you were going to address those issues
4 specifically in connection with your own suggested
5 terms and conditions.

6 MS. SEABORN: Yes, we will, Mr. Chairman.
7 But Mr. Freidin is quite right, we spoke with Mr.
8 Freidin before the evidence went in in-chief in this
9 panel and suggested that there be an amendment to term
10 and condition 59 with respect to notice to the public.

11 MR. HANNA: I wasn't aware of that, Mr.
12 Chairman. Thank you.

13 Q. Some points of clarification here
14 from our interrogatories. Again, Mr. Bisschop, if you
15 don't mind I will direct them to you and you can pass
16 them on if it's appropriate.

17 I would like to turn to page 11 of your
18 witness statement, paragraph 5, and we asked in
19 Interrogatory Question No. 4:

20 "Please explain why this alternative
21 would not provide a predictable wood
22 supply."

23 And the answer indicates that future wood
24 supply would be less predictable; would not be
25 predictable but less predictable. I guess the question

1 that flows out of that is: How predictable do you have
2 to be to be acceptable to the purpose?

3 MR. BISSCHOP: A. I think that's the --
4 one of the key elements of alternatives B and C is that
5 we are saying they will contribute to a continuous and
6 predictable supply of wood, they will achieve the
7 purpose of the undertaking.

8 The point to be made is that they are
9 predictable in the sense that we can predict that the
10 future wood supply will decline under those
11 alternatives, the supply is continuous but the
12 predictability of it is more and more uncertain as you
13 get into the future.

14 You can predict generally that there will
15 be a decline, but the certainty of the prediction in
16 terms of how much it would decline and how soon is less
17 predictable, and that's the explanation we would
18 provide for the answer in the sense that it deals with
19 the fact that future wood supply would be less
20 predictable.

21 Q. In making that statement, we are
22 talking about supply -- primarily softwood supply; is
23 that correct?

24 A. Primarily.

25 Q. Cannot the prediction in terms of

1 softwood supply be made fairly easily once the free to
2 grow status is achieved?

3 MR. ARMSON: A. Mr. Hanna, there would
4 be no measurement of free to grow, there is no
5 management. Free to grow is an integral part of the
6 system of timber management in identifying stands as
7 they move through the developmental stage. There would
8 be no free to grow measurement in this one.

9 Q. My understanding of free to grow is
10 the stage at which the softwood component reaches a
11 level at which it can basically compete against
12 tolerant hardwoods?

13 A. That is a very specific meaning of
14 the application of free to grow. Free to grow is not
15 specifically addressing only conifer. The fact that
16 conifers are a focus in regeneration and tending is
17 true, but free to grow is a characterization of a stand
18 usually in the younger age-class as it is judged by
19 certain measurable criteria to enter the growing stock
20 for the purposes of timber management.

21 That would not occur, as I said, in
22 alternatives B or C because you are not practising
23 timber management.

24 Q. Okay. Well, why in the case of one
25 of these alternatives would it be any less predictable?

1 In other words, if I have a mixed stand, I am faced
2 with the same, if you will, a forest community the
3 dynamics as I am in a clear stand, faced the same
4 predictive dilemma; am I not?

5 A. I think the difference between B and
6 C vis-a-vis timber management is that in the timber
7 management planning process you are -- first of all, an
8 integral part of that is an up-to-date maintenance of
9 an inventory in which free to grow status is a key
10 measurement of the - if you are right - the ingrowth of
11 the accruals to the growing stock, and this was
12 explained by Dr. Osborn and others in Panel 4.

13 Now, when you come to alternative B,
14 without timber management, from the existing data and
15 whatever supplementary data a company may wish to get,
16 you can make certain predictions and as you move into
17 time - and this is the point and I think in the
18 long-term is the statement here - those predictions
19 become increasingly not only difficult, but the
20 variance that you are going to expect will be greater
21 and the continuity of supply becomes lesser.

22 The probability becomes lower and lower
23 certainly for anything in terms of a particular
24 species -- group of species such as conifer.

25 Q. I want to make sure I understand why

1 as you go further out into the future the uncertainty
2 increases more rapidly with the one alternative as
3 opposed to the other. I don't disagree as we go into
4 the future the certainty is greater; why with one is it
5 more than the other?

6 A. Well, with timber management, what in
7 fact is happening is you are increasing your database
8 as you move along. As you practise management over
9 time you refine, you become more sophisticated and I
10 think historically there is ample evidence that this is
11 what not only has occurred but is occurring, so that
12 you in fact are obtaining sharper definitions, more
13 precise information as you move. That does not happen
14 in either B or C.

15 Q. Maybe there is a variation to B and C
16 that I didn't appreciate. My understanding is that
17 they are without renewal treatments, but I didn't
18 realize that associated with that you are suggesting
19 that any information that might be collected on the
20 forest landbase would also not be collected?

21 A. I think it was clear they are without
22 the application of timber management and timber
23 management involves, as I say, a spectrum of activities
24 and with those activities associated other -- if you
25 like, other procedures, inventory and so on. You are

1 talking here only about harvesting in alternatives B
2 and C; one with the application of guidelines and one
3 without the guidelines.

4 Q. Just to make sure I understand. I
5 thought we were talking about access also?

6 A. Well, there would be roads built,
7 but...

8 Q. So there is two of the four
9 activities?

10 A. Two, yes, but the regeneration and
11 maintenance activities and all the associated
12 activities would not occur.

13 Q. So what you are saying is, by
14 constructing these alternatives such that -- quietly
15 make sure you don't collect that data, the data that
16 you would need to make the supply more predictable if
17 you only harvested, you will eventually make them so
18 that they aren't attractive?

19 A. I don't think they are attractive
20 from the standpoint of an undertaking to provide a
21 continuous and predictable supply to an industry.

22 Q. But I could make them much more
23 attractive if I was simply to add a little variation on
24 it to say: Please collect the information?

25 THE CHAIRMAN: But then you are

1 practising some elements of timber management, because
2 an element of timber management is collecting data. Is
3 that not the case, Mr. Armson?

4 MR. ARMSON: Yes. If I might, Mr.
5 Chairman. I believe in direct evidence it was noted
6 that alternative C in particular was very much, as you
7 like, an image of what has gone on in the past before
8 management took place, and I would suggest that that
9 was a pretty accurate comparison and that that
10 certainly was not management and the reason that we
11 have applied management is to bring these other
12 activities and associated features into play to provide
13 a better way of providing for a continuous and
14 predictable supply. That's the essence of forestry.

15 MR. HANNA: Maybe I am getting tired, I
16 am now really confused about what is timber management
17 and what isn't timber management.

18 It seems to me if timber management is
19 doing everything right and all the alternatives are
20 doing everything else but that, then clearly we don't
21 need to go through much of an 'alternatives to'
22 evaluation.

23 It seems to me that's what I am hearing.
24 We don't collect data, we don't do anything that's --
25 you know, we don't do any planning that are other

1 alternatives because that would be timber management.
2 It seems to me a rather contrived structure of
3 'alternatives to', we need not spend the Board's time
4 talking about if that's the structure of these
5 'alternatives to'.

6 THE CHAIRMAN: Well, one of the basic
7 differences, Mr. Hanna, that I think has been explored
8 is the fact that you either have timber management on
9 the one hand or you don't. Those are the two basic
10 positions.

11 There might be some small overlap
12 inbetween, but generally I think, Mr. Armson, the case
13 is: You are either applying timber management or you
14 are not, you are harvesting without any form of
15 management?

16 MR. ARMSON: That's right. If I might,
17 Mr. Chairman. If you like, the calculation of MAD, the
18 maximum annual depletion, that goes on, that's part of
19 your calculating what in fact you can take, but it's --
20 what we are saying is, the predictability and the
21 continuity of that is what is becoming less and less in
22 the long run and that is what in fact has happened, it
23 happened over many decades in the history of this
24 province and other provinces.

25 MR. HANNA: Q. Mr. Armson, could we not

1 increase our predictability and also continuity if we
2 were to intensively regenerate and tend all sites?
3 Isn't that the other extreme?

4 MR. ARMSON: A. No, I don't know why
5 intensively--

6 Q. Well, to get more information --

7 A. --you will tend all areas -- no, I
8 think if there are areas within an area of forest
9 management where you by virtue of judgment in relation
10 to objectives in relation to the ability or support for
11 management that you make judgments, that you will in
12 fact gather more or less information.

13 There are many values out there and those
14 are judgments that are going on all the time. So I
15 don't think you have to have one level of intensity to
16 have timber management as either/or again; it's not...

17 Q. Can we look at Question 5. Perhaps,
18 Mr. Armson, it might be best for you just to continue
19 because I think it's very related to that question we
20 just dealt with in predictability.

21 This question asked, for all intents and
22 purposes, the same question except with respect to the
23 continuous variable in the statement. Are we not also
24 faced with the same matter of what is continuous and
25 what isn't continuous supply?

1 A. Well, the continuity is something
2 that you look at over time. In paragraph 5 of page 11
3 it is with respect to that long term that that specific
4 statement -- words 'continuous' and 'predictable' are
5 stated.

6 Q. But even if we don't renew these
7 sites, is it your opinion that they will turn into
8 desert land or will we have a forest that will
9 regenerate and have wood there?

10 A. There will be woody growth there of
11 one kind or another, there certainly won't be a desert.

12 Q. So we have a supply of wood and we
13 have a continuous supply of wood?

14 A. That's right, but it has to be in
15 relation to an industry.

16 THE CHAIRMAN: Meaning it has to be the
17 type of wood that the industry wants or can use?

18 MR. ARMSON: That's correct, sir.

19 MR. HANNA: Q. And, therefore, the
20 assessment of continuous supply is a site-specific
21 issue?

22 MR. ARMSON: A. Well, it's both site and
23 area specific, whatever level you want to treat it.

24 Q. No, I appreciate that. What I am
25 saying is: Depending upon demand of the industry in

1 terms of the nature of the fiber they require, the
2 piece size they want, et cetera, et cetera, that will
3 determine whether or not you have a continuous supply
4 in that sense?

5 A. Yes, there will be a continuous -- if
6 you like, there will be a continuous supply of woody
7 material on virtually all the sites. What that
8 comprises is another matter in terms of species.

9 Q. And what measure would we use to
10 decide when we have got enough wood to meet the
11 continuous supply objective?

12 A. The measures that one would have at
13 that time, some estimate of the amount that was out
14 there.

15 MR. HANNA: Mr. Chairman, I think in the
16 interest of time and the Board's time particularly, I
17 think I have explored this panel to the extent it's
18 reasonably practical.

19 I thank you for your indulgence, panel.
20 I may not see a number of you again in terms of being
21 able to enter into this discourse and dialogue, and I
22 thank you very much for your time.

23 THE CHAIRMAN: Thank you, Mr. Hanna.

24 Ms. Kleer, you will be ready to proceed
25 after lunch?

1 MS. KLEER: Yes.

2 THE CHAIRMAN: Okay. We will return at
3 two o'clock.

4 ---Luncheon recess taken at 12:25 p.m.

5 ---On resuming at 2:00 p.m.

6 THE CHAIRMAN: Thank you. Be seated,
7 please.

8 Ms. Kleer, just before you commence, we
9 just wanted to clarify a couple of matters with respect
10 to the scheduling.

11 Mr. Freidin, as we understand it, we are
12 doing the scoping tonight at roughly five o'clock on
13 the clearcut matter.

14 With respect to the AOC material which we
15 just for whatever reason saw yesterday or the day
16 before, although it is indicated on here it was
17 delivered December 21st, for some reason that got lost
18 in the shuffle and never got to the Members, so we have
19 just recently looked at that. We don't recall talking
20 about scoping this material particularly.

21 MR. FREIDIN: That's correct. I think we
22 discussed it when we first suggested it and there was a
23 decision there would be no scoping for it.

24 THE CHAIRMAN: Yes, and that's what we
25 wanted to confirm. And is it your intention to lead

1 direct on the AOC material immediately following
2 leading direct on the clearcut, or were you going to
3 lead the direct on the clearcut, have
4 cross-examination, then lead direct on the AOC and have
5 cross-examination on that?

6 MR. FREIDIN: Well, I think my original
7 intention was we were going to lead the evidence on the
8 AOC after the clearcut and before the
9 cross-examination. People will probably be
10 cross-examining on the two areas separately.

11 THE CHAIRMAN: On the two areas
12 separately?

13 MR. FREIDIN: Yes.

14 THE CHAIRMAN: Okay. So that will bring
15 us to a situation, we think, based on the time required
16 to finish the cross-examination of Panel 17, we
17 understand that you should be able to be completed with
18 the direct on both of these issues on Wednesday; is
19 that correct?

20 MR. FREIDIN: Yes.

21 THE CHAIRMAN: And then we would have
22 cross-examination on both issues the following Tuesday
23 and it is likely we will complete that on the Tuesday.
24 There are only two parties who want to cross-examine on
25 the clearcut, and I don't know how many parties want to

1 cross-examine on the AOC, perhaps we can get an
2 indication now, but it may well be that we can complete
3 that in one day.

4 MS. KLEER: Mr. Chairman, just a point of
5 clarification. Were you suggesting that first the
6 evidence on the clearcut -- well, the direct evidence
7 on clearcut and AOC would be heard at the same time and
8 then cross would follow that?

9 THE CHAIRMAN: That is what the
10 indication is, yes. The two issues would be dealt with
11 in direct prior to any cross-examination, and then
12 whoever wished to cross-examine either on both issues
13 or one of the issues would do so following the direct.

14 MR. FREIDIN: I have done a short
15 canvassing how long people might be in
16 cross-examination on the area of concern. It may very
17 well be difficult to do both clearcut and AOC in one
18 day based on my quick calculation, but perhaps -- I
19 mean, I can leave this for scoping, if everybody who is
20 here now will be here at the scoping, and get an
21 assessment of the cross-examination on the AOC and --

22 THE CHAIRMAN: But I guess what we wanted
23 to get to was: Even if it goes over into Wednesday, we
24 would have time, we believe, to deal with the other
25 motion either Wednesday afternoon or Thursday - your

1 motion, Mr. Hanna - and I think it's of some importance
2 to get that motion out of the way prior to starting the
3 Industry's case and prior to having all of the draft
4 terms and conditions filed and prior to getting into
5 the negotiations later in February.

6 MR. HANNA: Mr. Chairman, two matters.
7 First of all, with respect to the AOC package, at this
8 time I don't have clear instructions from my clients
9 but in my expectations we will not be cross-examining
10 and I will not be here at the scoping session, just so
11 you are aware of that.

12 With respect to the motion, I have spoken
13 to Ms. Blastorah about this and I just generally
14 canvassed other counsel to see what schedules were and
15 whatever. My client would greatly prefer if it was in
16 Toronto that the motion was heard, if that's possible.
17 If you were to finish early on Wednesday, we could sit
18 at the Board's office on Thursday, if that is possible.

19 MR. CASSIDY: There is no objection from
20 this party to sit in Toronto.

21 THE CHAIRMAN: The Board doesn't have any
22 objections, quite frankly, at all and that would
23 actually fit into the Board's plans even better because
24 we have a Board meeting scheduled for Friday in
25 Toronto.

1 MR. HANNA: I would be prepared to go on
2 that system, Mr. Chairman.

3 MS. BLASTORAH: Mr. Chairman, the only
4 concern which I raised with Mr. Hanna this morning was
5 the possibility of that motion extending over more than
6 one day, and when I spoke to him this morning I was
7 unaware of the Board's commitment on Friday, which I
8 learned of subsequently.

9 But we had discussed having it -- I had
10 suggested to Mr. Hanna it might be possible to start
11 that motion on the Thursday on the offchance that it
12 did run longer than one day so as not to interfere with
13 Mr. Cassidy's start date for his client's evidence.

14 The only concern I have, and I am quite
15 willing to deal with this whenever the Board thinks it
16 is appropriate and whether that's here or in Toronto,
17 the only problem would be if everyone is here on
18 Wednesday to hear evidence and we forego doing anything
19 Wednesday afternoon, for example, and then we start the
20 motion on Thursday in Toronto and don't complete it,

21 That's the only concern I raise. I don't
22 know whether that's a real concern at this time or not.

23 MR. CASSIDY: Well, it is difficult to
24 say whether or not it is real concern in the absence of
25 seeing how we get going on argument.

1 However, if past experience is any
2 indication, Ms. Blastorah may have a legitimate point
3 and my comments were predicated on the concept we would
4 do it in a day, but if not --

5 THE CHAIRMAN: Well, what about the
6 possibility of continuing on with the submissions on
7 the motion later on Monday?

8 MS. BLASTORAH: Monday evening you are
9 suggesting?

10 THE CHAIRMAN: Yes, after you have
11 completed putting in direct on Monday with the
12 Industry's Panel 1. If we have to go over, we could
13 deal with it with a later session on Monday.

14 MS. BLASTORAH: It appears that that
15 doesn't seem to be a problem with anyone here, assuming
16 if the Board is willing to sit late.

17 That would certainly facilitate Mr. Hanna
18 in not having to come up to Thunder Bay just on the
19 possibility of having to deal with that Wednesday
20 afternoon.

21 THE CHAIRMAN: Well, okay. There is a
22 possibility, depending on how long people are going to
23 be on Tuesday in cross-examination, as to whether the
24 cross-examinations would extend into Wednesday.

25 MR. MARTEL: We only have two people so

1 far on the clearcut, and Mr. Hanna has already
2 indicated he's not going to go on to the AOC. I don't
3 know where all the time --

4 MR. FREIDIN: I think you should maybe
5 just ask for -- I think MOE and Nishawbe-Aski Nation
6 may be spending some time on the AOC documentation.
7 That's what my understanding is.

8 MS. KLEER: I am presuming we will be
9 about two hours at the outside; I mean, nothing more
10 than two hours at any rate.

11 THE CHAIRMAN: Two hours for the AOC
12 issue?

13 MS. KLEER: Yes.

14 THE CHAIRMAN: And what about you, Ms.
15 Seaborn?

16 MS. SEABORN: I would expect two hours
17 for both issues, Mr. Chairman.

18 THE CHAIRMAN: Well, for both issues but
19 that includes the clearcut as well?

20 MS. SEABORN: That's right, clearcut and
21 AOC, two hours.

22 THE CHAIRMAN: Mr. Cassidy?

23 MR. CASSIDY: I would say half an hour to
24 an hour for both issues; about 15 to 20 minutes on the
25 AOC, the balance being on clearcutting and we're trying

1 to shorten that.

2 THE CHAIRMAN: So it looks like we will
3 be finished Tuesday.

4 MR. FREIDIN: Based on that estimate.

5 THE CHAIRMAN: And, therefore, we could
6 return on Tuesday and start the submissions on the
7 motion on Wednesday, and that way we would complete by
8 Thursday in any event. We will do that in Toronto.

9 MS. SEABORN: Mr. Chairman, I just point
10 out with respect to the motion, parties did have to
11 file statements of factum law with respect to that
12 motion and that may be able to shorten submissions, I
13 would suggest, in these circumstances because the Board
14 will have in front of it parties' positions with
15 respect to the motion, and I don't really know how many
16 people are going to argue in any event. I can't see it
17 going beyond a day is my comment.

18 THE CHAIRMAN: Well, it may well not.
19 You have got re-examination?

20 MR. FREIDIN: For this panel?

21 THE CHAIRMAN: Yes. Well, perhaps with
22 respect to these two issues; have you not?

23 MR. FREIDIN: That's right.

24 THE CHAIRMAN: I don't know how long that
25 is going to take, but presumably that wouldn't take

1 very long.

2 MR. FREIDIN: I would hope not. I was
3 thinking we would try to fit that in in the same day,
4 four to five, five and a half hours.

5 THE CHAIRMAN: Does anyone know whether
6 Forests for Tomorrow is going to be dealing with the
7 AOC panel?

8 MR. CASSIDY: I seem to recall the letter
9 they provided indicated that they were not; however, I
10 am not certain of that.

11 THE CHAIRMAN: That was for clearcut, but
12 we weren't sure whether it covered the AOC matter as
13 well.

14 MR. CASSIDY: I thought it related to
15 both, Mr. Chairman, although I haven't seen the letter
16 in three days.

17 MR. FREIDIN: We will check that, be able
18 to advise you at five o'clock.

19 MR. CASSIDY: In which case we might
20 perhaps sit late on Tuesday night. I know there is a
21 nine o'clock flight.

22 THE CHAIRMAN: Yes. I think we can
23 probably finish off Tuesday based on the present
24 schedule, even if we go out on the last flight Tuesday,
25 then commence on Wednesday with submissions on Mr.

1 Hanna's motion and when we finish it, we finish it.

2 And then the next time we would sit would
3 be the commencement of your case, Mr. Cassidy, and that
4 way we will be assured of finishing all of those
5 matters. In fact, if the Board has any additional time
6 after the motion, we could work on our ruling or any
7 ruling which might result from it.

8 MR. FREIDIN: The proponent's case ending
9 on January the 30th, 1990 has a nice ring to it.

10 Will the Board be advising other parties
11 through Ms. Devaul of the change in times?

12 THE CHAIRMAN: Yes. Well, this is why we
13 want to try and settle it now, if we can, so that we
14 can ensure that the appropriate notice is given on the
15 Board's recorded message, No. 1; and also, it will
16 appear in the transcripts and (b) she can call around,
17 at least to the parties that normally participate, with
18 respect to these changes.

19 Mr. Colborne, are you going to be doing
20 anything with respect to the ASOC issues that were
21 filed?

22 MR. COLBORNE: No, thank you, Mr.
23 Chairman.

24 THE CHAIRMAN: Thank you. Mr. Edwards I
25 believe will be away still.

1 MR. FREIDIN: That's correct. And can I
2 just confirm that the people who have filed statements
3 of factum law on the purpose motion were MOE, OFAH,
4 OFIA and the Ministry, and Forests for Tomorrow.

5 THE CHAIRMAN: You believe those are the
6 ones?

7 MR. FREIDIN: Okay.

8 THE CHAIRMAN: And ones who did not, who
9 are represented and who did not file factums of law
10 will not be addressing the motion.

11 MR. CASSIDY: I can't say, to be quite
12 candid, whether or not Mr. Cosman has done so. You
13 know, I am going to attempt to check at the break and I
14 will advise him of what you just indicated.

15 I have just been up to deal with other
16 matters, Mr. Chairman, so I will advise Mr. Cosman.

17 THE CHAIRMAN: I had thought the industry
18 filed one, I may be wrong.

19 MR. CASSIDY: Well, it's only an
20 embarrassment to myself. I can't confirm that and I
21 will check -- I know he intends to make submission, so
22 I presume he has filed one, but I will check with him
23 to confirm that he has. If he didn't file, I will tell
24 him to do so immediately.

25 THE CHAIRMAN: Post haste.

1 MR. HANNA: Mr. Chairman, I just mention
2 Mr. Cosman did mention to me that he was planning on
3 filing submissions, so that would confirm what Mr.
4 Cassidy is saying.

5 MR. CASSIDY: Thank you, Mr. Hanna.

6 THE CHAIRMAN: Well, those things should
7 be in. Okay.

8 MR. COLBORNE: If I may, Mr. Chairman,
9 since you referred to parties that had not filed a
10 statement of factum law, I represent one of them. When
11 I heard of the change in the schedule for the argument
12 of that motion I reconsidered an earlier decision not
13 to file anything on it because I thought it would
14 present me with time to consider whether or not some
15 submission ought to be made by my client.

16 Previously it was too close to the other
17 motion which was of more direct concern. So I thought
18 I would just rise now and I might be, if I get
19 instructions to do so, asking for you to bend the rule,
20 but...

21 THE CHAIRMAN: Well, I think in view of
22 the fact that we have changed around when that
23 particular motion is going to be heard and returnable,
24 the Board will be fairly lenient on allowing counsel to
25 put something in, but we do want something in in

1 advance of the motion.

2 MR. COLBORNE: Yes, I am aware of that.

3 THE CHAIRMAN: So we have clearly your
4 position; and, secondly, we have the benefit of any
5 submissions on law that you may have discovered in your
6 research.

7 MR. COLBORNE: Thank you.

8 THE CHAIRMAN: Thank you.

9 Ms. Kleer?

10 CROSS-EXAMINATION BY MS. KLEER:

11 Q. Okay. If I may, I will start with
12 turning to page 59 of the witness statement, and I am
13 going to be looking at Section 4.2 which deals with
14 consequences for community stability.

15 Now, the first paragraph there about
16 timber management describes the analysis of the timber
17 management alternative with respect to community
18 stability, and my questions are going to be directed to
19 Mr. Clark.

20 Mr. Clark, could you remind the Board of
21 who the persons were who assessed these alternatives?

22 MR. CLARK: A. Well there were a number
23 of people: myself, Mr. Larry Douglas, Mr. Duncanson,
24 Ms. Coke, Mr. Pyzer. And I should also say, and I
25 pointed out earlier on in my testimony, that we

1 consulted widely where we felt we needed input from
2 other people within or outside the Ministry.

3 Q. Okay. I would like to just turn to a
4 brief portion of your evidence which was given on
5 January 11, and if I could just read from the
6 transcript, Volume 172 at page 30490, and this is
7 referring to what you just said:

8 "We tried to pick people or at least some
9 of the members of the team had to have
10 had personal knowledge and experience in
11 the area of the undertaking."

12 Now that last phrase, 'personal knowledge
13 and experience in the area of the undertaking', when
14 you say 'in the area of the undertaking', what are you
15 referring to?

16 A. Well, I think one of the distinctions
17 I was trying to point out there is that it occurred
18 that we could have -- to us that in preparing this
19 evidence we could have, for example, acquired the
20 services of "experts" who came from outside the area of
21 the undertaking or hadn't been directly involved in it
22 at any point in their working careers; instead we chose
23 people who had at least, in some cases, lived and
24 worked in the area of the undertaking and, as a result,
25 had some familiarity with it.

1 I would stress, however, that it
2 didn't -- you know, we are not implying that they were
3 totally familiar with all aspects of it.

4 Q. Okay. But you are referring to south
5 of that 1987 line?

6 A. That's correct.

7 Q. Is that right? Okay. So that you
8 were focusing then on the impacts within that
9 particular geographic area?

10 A. To a large extent, yes.

11 Q. Okay. Now, of all the people that
12 you listed as having directly been involved in this
13 assessment, did any of those persons have experience --
14 or expertise rather in the area of assessing social
15 impacts as opposed to economic impacts?

16 A. Well, you could perhaps help me. I
17 think we have been through this discussion before and I
18 just want to make it clear, when you say 'experience',
19 are you talking about technical qualification, academic
20 credentials?

21 Q. Well, what I am talking about is,
22 have any of them been characterized before the Board as
23 having expertise in that area?

24 A. I think mainly on the basis of their
25 experience as resource managers, people like myself,

1 Mr. Straight, Mr. Pyzer, because of our previous
2 working experience, have dealt with a fairly wide range
3 of stakeholder groups and, as a result of that, have
4 some knowledge of the concerns that they have, and I
5 would underscore in particular as it relates to timber
6 management planning wherein, having been involved in
7 that process, we have some knowledge of how to respond
8 to issues that have arisen in the course of developing
9 those plans.

10 Q. Were any people consulted with
11 respect to the impacts of the undertaking and the
12 alternatives to the undertaking specifically in the
13 area of native impacts, and can you indicate who those
14 people were?

15 A. Well, the people -- there were no
16 people outside the group of people that I identified
17 previously that we talked to, no.

18 What we did is we relied primarily on the
19 evidence that I or Mr. Pyzer had presented in Panels 10
20 through 14 dealing with the potential effects of
21 various timber management activities and we used that
22 as a point of departure for then looking at those
23 effects in the context of each of the other
24 alternatives that we have presented in this panel.

25 Q. So then, is it fair to say that what

1 you looked at when you were assessing the alternatives
2 was nothing more than the evidence that you had put
3 together in Panels 10 to 14?

4 A. Well, what I mean by that is, in
5 those panels we identified a number of concerns that we
6 indicated native people had expressed to us, for
7 example, in timber management planning, or that we felt
8 would be relevant to them, and then in the context of
9 each of the alternatives, we were then looking at the
10 extent to which that particular concern was relevant in
11 that particular alternative and whether the impact
12 associated with that alternative was either positive or
13 negative.

14 Q. Okay. But you weren't looking at any
15 new evidence when you put together your assessment of
16 these alternatives, the 'alternatives to', together
17 with the assessment of the timber management
18 alternative?

19 A. We didn't go out and actually collect
20 any new evidence per se, no.

21 Q. Okay. Turning then to this specific
22 statement here there are -- I will just read it:

23 "With the continuation of jobs in the
24 forestry sector and assuming stable
25 tourism and mining sectors, most

1 communities in northern Ontario and the
2 area of the undertaking in southern
3 Ontario should maintain a relatively
4 stable property tax base and a population
5 of sufficient size to maintain their
6 existing community services and
7 their services sector."

8 The communities that you are referring to
9 here, are those all communities within the area of the
10 undertaking.

11 A. Well, I think it's a generalization
12 and I think we noted that there are going to be
13 exception, but I think what we were saying,
14 particularly those communities that are - how do I
15 describe it - that rely in a significant way on the
16 forestry industry for their livelihood, those are the
17 communities that we are talking about here.

18 Q. So could I generalize that and call
19 them sort of forest sector dependent communities?

20 A. Yes, I think that would be a good
21 description.

22 Q. So then, this is not an analysis of
23 the effects at a community level on a native community
24 that is not dependent upon the forestry sector?

25 A. No, not to the same extent. I think

1 it goes without saying that the communities that are
2 going to be most directly affected are those that rely
3 in a significant way on employment generated from the
4 industry.

5 Q. Is there anywhere else in this
6 witness statement where you have assessed the
7 alternatives at a community level, the alternatives
8 including the timber management alternative at a
9 community level with respect to native communities?

10 A. I think -- we don't specifically talk
11 to (1) native communities or (2) other communities that
12 are not relying solely or to a large extent on the
13 activities of timber management.

14 However, in dealing with stakeholder
15 groups, we do make reference to the concerns of any
16 native people and to the extent that we are able to
17 identify, are able to identify some of the potential
18 effects of those alternatives, we have spoken to them.

19 Q. Okay. But those are generally, you
20 would agree, not on the community level but more on an
21 individual basis if there is an individual trapper, per
22 se?

23 A. Well, certainly the way they are
24 described would imply that; however, I think by
25 extension, if trapping is an important activity of

1 native people in a particular community or commercial
2 fishing is, the assumption we were making is that you
3 could have a community affect associated with a
4 particular option.

5 Q. So what you are saying then is that
6 those individual effects that you have described in the
7 context of stakeholder groups could apply at a
8 community level?

9 A. Yes, they could.

10 Q. For native communities?

11 A. Yes.

12 Q. Just a brief point. The indicators
13 that you have chosen here as community stability
14 indicators are or appear to be - and I would like your
15 confirmation - a stable property tax base, first of
16 all; and, secondly, a population of sufficient size to
17 maintain existing community services and services
18 sector.

19 Are either of those, in your opinion,
20 appropriate community stability indicators for a native
21 community? Let's look first at the stable property tax
22 base?

23 A. I am not sure I can speak to that. I
24 am not just sure frankly how the -- how and if the tax
25 base that we would associate with other communities

1 applies in that situation. I think population of
2 sufficient size to maintain their existing community
3 services is certainly probably a valid one.

4 Q. Well, I guess I would say that just
5 looking at that stable property tax base, is it not the
6 case that most native communities and certainly native
7 reserves don't have a property tax base?

8 A. That is what I am saying, yes, I am
9 sorry.

10 Q. Okay. But you are saying that they
11 have a services sector that would -- so that this
12 stability indicator would be an appropriate indicator?

13 A. Well, I think it would be to some
14 extent, yes.

15 Q. Okay. I would like to turn to page
16 63 to the second bullet there that deals with
17 archaeological and cultural heritage resources, and I
18 will just read it into the record:

19 "Significant archaeological and cultural
20 heritage resources would be largely
21 protected by use of heritage resource
22 guidelines, some heritage resources
23 could be inadvertently destroyed."

24 Now, this is a description; is it not, of
25 the timber management alternative and effects of the

1 timber management alternative?

2 A. That's correct.

3 Q. What heritage resource guidelines are
4 being referred to?

5 A. The as yet uncomplete heritage
6 resource guidelines, and I thought this might give rise
7 to some questions.

8 I think we have led evidence previously
9 indicating that we are in the process of producing
10 those guidelines, and the assumption on which -- we are
11 doing this, I think I have spoken to previously, on a
12 co-operative basis with a number of groups.

13 The assumption here is that those
14 guidelines will be complete and when they are complete
15 they will represent the best science and, if you want,
16 technology associated with the protection of those
17 kinds of resources and, hence, would be -- that is the
18 assumption we have made in developing this particular
19 option.

20 Q. But these resource guidelines haven't
21 been put in front --

22 A. No, they are not in existence yet.

23 Q. Will the parties have an opportunity
24 to cross-examine on them before this hearing is
25 through?

1 I guess what I am getting at is, we've
2 had an opportunity to cross-examine with respect to the
3 other guidelines, we don't appear to have that
4 opportunity here and, from my client's perspective,
5 that is a very important issue.

6 A. I am hesitating because I am not sure
7 at this point what the schedule is. In light of not
8 knowing what the schedule is, I am not sure how we
9 would deal with this in a procedural way at the
10 hearings. I think I should probably defer to legal
11 counsel.

12 MR. FREIDIN: I think it's our view, Mr.
13 Chairman, that if these guidelines are developed to an
14 appropriate stage before the hearings end that we have
15 undertaken that we would provide them to the Board,
16 assuming for the moment that that would be done through
17 our reply evidence and panel members would be subject
18 to cross-examination on that.

19 We can't make a commitment that they are
20 going to be done, but they are going to be done, the
21 Board does have the proponent's commitment that they
22 will be filed.

23 MS. KLEER: Q. Well, I would just like
24 to turn for a moment to term and condition 40.

25 THE CHAIRMAN: Well, why can't you make

1 the commitment that they are going to be done and put
2 some kind of flexible time frame on it?

3 MR. FREIDIN: Because the guidelines are
4 being developed through a co-operative venture
5 involving many parties other than the Ministry of
6 Natural Resources.

7 And as you will appreciate, Mr. Chairman,
8 these matters sometimes take longer because of just
9 innocent conflicts which arise during the preparation,
10 and we have every interest in fact -- we will file them
11 when they are available. I can't speak any further
12 than that, I have no instructions other than that.

13 THE CHAIRMAN: Well, in the absence of
14 the guidelines being available, what are you going to
15 put forward as to how these resources should be
16 protected in the absence of guidelines?

17 MR. FREIDIN: Well, perhaps that is a
18 question for Mr. Clark.

19 THE CHAIRMAN: Mr. Clark?

20 MR. CLARK: Could you repeat that,
21 please?

22 THE CHAIRMAN: In the absence of
23 guidelines being formulated and if formulated within
24 the time frame of this hearing, in the absence of that,
25 what evidence are you going to put before the Board as

1 to how these resources should be protected, so that the
2 Board has something to go on in terms of specifying in
3 its decision as to how these matters should be treated?

4 MR. CLARK: Well, I think the answer is
5 that we intend to have the guidelines that are under
6 preparation out before the end of our case -- not the
7 end of our case, but certainly before the end of the
8 hearing, so that we will in one way or another have an
9 opportunity to --

10 THE CHAIRMAN: So the undertaking is:
11 Either you will have guidelines to put before the Board
12 or you will have evidence to put before the Board as to
13 how you intend to protect these resources, in which
14 case, if you don't have the guidelines, the parties
15 interested can at least cross-examine on the evidence.

16 MR. FREIDIN: Well, I think that there
17 has been evidence to date led as to how archaeological
18 and cultural heritage resources have been protected in
19 the past through the area of concern planning process.
20 You recall there was examples by Mr. Clark in Panel No.
21 7 and there's other examples. So there has been
22 evidence as to how it's done, it's just that there has
23 been no guideline prepared in relation to that and...

24 THE CHAIRMAN: Well, okay.

25 MR. FREIDIN: If there is no guideline

1 provided before the end of our case, if we are unable
2 to in fact file them because there isn't one, then it
3 would have to be a matter of argument whether in fact,
4 without such guidelines, we can adequately protect
5 those resources.

6 THE CHAIRMAN: That's right. And all the
7 Board is saying is, if you are going to change the way
8 you have protected them in the past over what you have
9 led already in front of this Board, then we would
10 expect further evidence on that in the absence of
11 guidelines, that's all.

12 MR. FREIDIN: Certainly, certainly. We
13 couldn't obviously...

14 THE CHAIRMAN: Okay.

15 MS. KLEER: Q. Just for clarification,
16 in term and condition 40(a) it lists the provincial
17 guidelines, the use of which is mandatory in timber
18 management, and one of those is the Timber Management
19 Guidelines for the Protection of Cultural Heritage
20 Resources which is on page 18, sub-item (x).

21 I suspect that you would agree with me -
22 and I will ask you - if those heritage resource
23 guidelines are not in place, that that item would
24 certainly have to be removed from that term and
25 condition?

1 MR. CLARK: A. That's correct. But it's
2 certainly our intention to have them complete. That
3 was the reason we involved ourselves in the process of
4 developing them in the first place.

5 MS. KLEER: Mr. Chairman, there is a bit
6 of a problem that I am beginning to see. If the MNR
7 decides that, in their reply evidence, they intend to
8 deal with the heritage and cultural resource
9 guidelines, we will have an opportunity to
10 cross-examine, but what I am wondering is whether or
11 not that is going to put us in a predicament with
12 respect to our client in terms of leading direct
13 evidence that would meet what evidence they put forward
14 in their reply; in other words, we are only going to
15 have an opportunity to cross-examine.

16 THE CHAIRMAN: Well, you might, in those
17 circumstances, if an unfairness existed, have the right
18 of reply. If you, in effect, Mr. Freidin, lead more
19 evidence, there would be cross-examination presumably
20 by Ms. Kleer.

21 If something arose that you hadn't
22 covered because of the way it was introduced, you might
23 have the right of reply to try and shore that up. It's
24 not inconceivable that that could happen, and that
25 might alleviate your concerns.

1 MS. KLEER: I would be satisfied with
2 that.

3 Q. Okay. Just turning briefly to this
4 statement, and perhaps it's -- well, I will ask it
5 anyways.

6 You have stated that significant
7 archaeological and cultural heritage resources would be
8 largely protected. In the absence of having those
9 heritage resource guidelines, what is your best
10 understanding of that word "significant", or does this
11 make any sense in the absence of those guidelines?

12 MR. CLARK: A. Well, I think it does. I
13 think in previous evidence that I led and a number of
14 other people, including Mr. Pyzer, was that we do go
15 through a reasonably consistent process in attempting
16 to identify and respond to values such as
17 archaeological sites, and one of the things that almost
18 as a matter of course we have always done would be to
19 consult with specialists in the Ministry of Citizenship
20 and Culture who can provide us with technical
21 assistance in coming up with -- for evaluating the
22 significance of a site and/or for coming up with
23 specific recommendations or prescriptions in how to
24 deal with it in timber management -- in certain timber
25 management situations.

1 So I think that significance is something
2 that we have always dealt with, perhaps not in as
3 formal a way as will be apparent when the guidelines
4 come out.

5 Q. But that is done largely in
6 consultation with Citizenship and Culture?

7 A. Well, I should -- you know, to a
8 large extent when you are dealing with the technical
9 issue of how do you salvage a site or how to identify
10 its significance, you would certainly deal with that
11 Ministry.

12 In certain instances you might also find
13 it appropriate to deal with a particular native
14 community, for example, that had an interest in those
15 resources as well. It might be a case where the
16 resource had a particular value to them and that would
17 be a consideration as well.

18 Q. But a consideration only, not a
19 determinative factor?

20 A. Well, I don't like to -- it could
21 well be a determinant factor.

22 Q. It depends upon the guidelines and
23 what they say?

24 A. Well, it depends on the guidelines
25 but more in the absence of the guidelines, I guess it

1 would depend on the weight of the evidence that you
2 have got in the particular situation that you were
3 dealing with.

4 Q. Would you be able to identify what
5 would be a non-significant archaeological or cultural
6 heritage resource?

7 A. I don't like -- I don't think I would
8 want to do it in the hypothetical. If I had some
9 examples I might be able to help you.

10 Q. Well, this is your evidence. It
11 implies that there must be a non-significant, if you
12 have made the distinction between significant and
13 non-significant.

14 A. I need a little time to think about
15 it. I wonder if I could come back after the break
16 and --

17 Q. That would be fine with me, if that
18 is fine with the Board. The words "largely protected"
19 are also of some interest to me. I just want
20 clarification. Does it mean some but not all
21 significant resources will be protected?

22 A. I think it implies that there is
23 always some risk involved when you apply a set of
24 guidelines that you may not achieve a hundred per cent
25 protection.

1 Q. Of a particular resource or the scope
2 or the whole span of resources? In other words, are
3 you saying that a particular resource might not be
4 completely protected, or are you saying that all
5 resources together, like only a percentage of the
6 resource?

7 A. I think you can almost read it both
8 ways. I think in a very general way we are saying that
9 we think, although we haven't got the completed
10 guidelines, but when they are complete we believe that
11 they will - the way I would say it in normal
12 conversation - to a large extent protect the values
13 that are identified. There may be a few instances
14 where they don't. I think all we are doing is allowing
15 for that possibility.

16 Q. At the very best though this
17 statement has to be considered as speculative given
18 that we haven't got any evidence of what those
19 guidelines are going to actually contain?

20 A. Oh, I don't disagree at all. I think
21 that -- as I say, we don't have the guidelines and I
22 also want to point out that we are talking on a very
23 general level at the scope of the area of the
24 undertaking and, for that reason, it's hard to -- and I
25 think we would be correct to try and be more precise.

1 Q. Okay. I would like to turn now to
2 page 64, the first bullet there.

3 A. There it may be appropriate to give
4 you an example. You were asking about a significant
5 versus insignificant site.

6 If somebody is involved in clearing a
7 right-of-way for a road and they are relatively close
8 to it - and I am being very hypothetical here - close
9 to perhaps some riparian habitat or an old raised beach
10 from a remnant lake level, say, Lake Superior shoreline
11 or another inland lake from preglacial times, if
12 someone happened to identify, find an arrowhead or a
13 piece of shard that might -- would obviously give rise
14 to some concern about whether or not there was indeed a
15 significant archaeological site there.

16 Now, the issue of significance could only
17 really be determined by doing some kind of an
18 evaluation of that particular site and it might be that
19 on inspection of the site little or no additional
20 evidence was found to support the contention that there
21 was cause for concern; in other words, for whatever
22 reason - this is hypothetical - no additional artifacts
23 or clues were found that would lend credence to the
24 idea that that was really important.

25 On the other hand, if you found that

1 there were several successive layers of habitation on a
2 seasonal habitation site or something like that, then
3 that would give rise probably to the decision that this
4 was a significant site for which more additional action
5 would be required in terms of either salvaging the site
6 or further exploring it or taking action to avoid it.
7 So those are the kind of things I am talking about when
8 I talk about significance.

9 Q. All right. Let's go on then to page
10 64, that paragraph that begins with: "Various
11 guidelines..." I believe this question should go to
12 you, Mr. Clark. Is it fair to say that this paragraph
13 is a summarization of the evaluation of advantages and
14 disadvantages to the native communities of the chosen
15 undertaking?

16 A. That's correct.

17 Q. Okay. I would like to take this
18 apart and sort of examine each sentence. Looking then
19 at the first sentence, it says:

20 "Various guidelines would prevent or
21 minimize adverse impacts of timber
22 management activities on flora and fauna
23 important to native people."

24 To date, has MNR put forward any evidence
25 which identifies flora that are important to native

1 people?

2 A. No, I don't believe we have. I think
3 if you look at any of the publications that deal with,
4 to give you an example, the medicinal properties of
5 plants which might, for example, be a traditional
6 interest that native people might have for certain
7 plant species, you will find that there is virtually no
8 flora present to the extent that don't have certain
9 values.

10 And my response would be that it would be
11 very much a situation where we would have to rely on
12 native people to tell us which species were important
13 to them and, to some extent, to help us in locating
14 them.

15 Q. But then I fail to see how the
16 guidelines have any impact on protecting flora that are
17 important to native people. It seems to me that you
18 are relying upon a different process; i.e., having the
19 native people identify to you the flora species that is
20 of particular concern to them?

21 A. I think the one instance where
22 that -- what you are saying may not be true is to the
23 extent that the Cultural and Heritage Guidelines speak
24 to sites that are of traditional significance to native
25 people, which may be sites where they've traditionally

1 collected particular plants that may have importance to
2 them, then those particular guidelines would deal with
3 them.

4 Q. Apart from that, though, are any of
5 the other guidelines capable of preventing or
6 minimizing those adverse impacts, given that you don't
7 know what flora are of importance to native people?

8 A. I would agree with you.

9 Q. So in a sense that statement is a bit
10 of an oversimplification, at least with respect to
11 flora that are important to native people?

12 A. Well, I think it will depend on what
13 kind of direction is identified in the Cultural and
14 Heritage Guidelines.

15 THE CHAIRMAN: Are not the native peoples
16 being consulted in the development of the guidelines?

17 MR. CLARK: Yes, they are.

18 THE CHAIRMAN: And are they being
19 consulted specifically with respect to how flora of
20 interest to them might be protected?

21 MR. CLARK: I'm sorry, I can't answer
22 that, I just don't know.

23 DR. EULER: They would be in the
24 monitoring part of the program because they will be
25 part of those stakeholder committees, and we have

1 defined flora as one of the areas of interest in that
2 process, and so they would have an input there.

3 MS. KLEER: Q. But the monitoring
4 activities that you are talking about don't get applied
5 through Cultural and Heritage Resource Guidelines?

6 DR. EULER: A. No, they do not yet
7 apply, that's right. I see this as a future activity.

8 Q. So at this point, in the absence of
9 any evidence as to what those Cultural and Heritage
10 Resource Guidelines are going to contain, we don't know
11 for certain whether they are going to contain reference
12 to flora species, and even then they would refer to
13 them in the context of a heritage resource?

14 MR. CLARK: A. You're right. We don't
15 know exactly how that will be handled. And I think the
16 point I made earlier is a really important one, that
17 it's still going to be one of those situations where we
18 have to rely on native people to assist us in
19 identifying those particular sites and those particular
20 plant species, for example, that are of importance to
21 them.

22 My statement about the fact that all
23 plants have significance is an important one to
24 recognize. When you read any of those publications
25 they are absolutely chalk full of incredible sort of

1 uses that have occurred through time and, as a result
2 of that, it would be important for us to consult to
3 know which ones, if any, are important.

4 Q. Okay. Let's look more generally at
5 this statement for a moment. Now, you would have to
6 read this as saying that the guidelines could in some
7 cases prevent adverse impacts?

8 A. Correct.

9 Q. Okay. I would like to turn to Table
10 32 at Panel 10 of your evidence, at page 1031. I
11 believe the Board has a copy of that.

12 MR. FREIDIN: Sorry, what page?

13 MS. KLEER: Panel 10, Table 32.

14 MS. BLASTORAH: I don't believe the
15 witnesses have a copy of that here, Mr. Chairman. I
16 was not advised we were going to need it. I don't
17 know, Mr. Clark may have copies, certainly I don't.

18 MS. KLEER: I have an extra copy here if
19 he wants to refer to it.

20 MR. CLARK: That would be helpful.

21 MS. KLEER: (handed)

22 Q. What I am trying to do, Mr. Clark, is
23 to see how your previous evidence relates to the
24 statement that you have made here, just so you
25 understand the context of this.

1 Okay. If we look at the right-hand side
2 of that table at page 1031 we see a number of measures
3 to enhance, prevent, minimize, et cetera, and there are
4 several sets of guidelines that are referred to, and
5 then I would like to focus on that statement that says:

6 "Where the above provisions do not
7 provide adequate protection, habitats of
8 identified species of concern to native
9 people may be protected on a
10 site-specific basis."

11 Now, is it not a fair reading of that
12 table and how that evidence fits together in that table
13 that in some cases; that is, where the above provisions
14 don't provide adequate protection; i.e., the
15 application of the guidelines, that species of concern
16 may not be protected on a site-specific basis?

17 It says they may be, but the assumption
18 must also be that they may not be so protected.

19 A. It says 'may' there. I can recall
20 writing this because to the extent that they are
21 identified they can be protected, and all we are really
22 saying there is that there is a range of values, some
23 of which will be protected by the guidelines and some
24 of which won't, but if they are identified then they
25 can be dealt with on a site-specific basis.

1 Q. Okay. If we go back then to your
2 statement at page 64 it says:

3 "Various guidelines would prevent adverse
4 impacts or would minimize adverse
5 impacts."

6 I guess I have a problem fitting together
7 what you said in Table 32. It seems to me that the
8 statement that you have made here is put in a more
9 positive vein than what we saw earlier. It seems to me
10 that you are suggesting that the guidelines by
11 themselves and apart from identification by native
12 people as an extra step would be able to achieve the
13 objectives of preventing or minimizing adverse impacts?

14 A. I'm just going to read this before I
15 answer. You are basically implying that the statement
16 on page 64 is a little too strong, particularly in
17 light of what we've said in earlier evidence?

18 Q. That's correct.

19 A. It could -- I don't have any problem
20 with what you are saying, it could be there could be a
21 qualification put in there and I wouldn't be concerned
22 with -- I guess what I am prepared to say is you could
23 read it that way and, based on what I've said
24 previously, you could interpret it to be a little
25 overly positive.

1 If I were to qualify it at all, I would
2 simply say that in those instances where the guidelines
3 do not address the particular issue, it will be dealt
4 with on a site-specific basis through the area of
5 concern planning process.

6 Q. So would you be -- I'm not asking
7 that this be amended, but would you agree with me that
8 that qualification that you've just stated should have
9 formed part of your analysis of the advantages and
10 disadvantages to native communities?

11 A. It could have. I think it's one of
12 the risks that you run when you are trying to
13 generalize over a large area. And I think, to go back
14 to what I said in previous evidence, we did try and
15 look at these effects and to try and generalize across
16 the area of the undertaking.

17 I think in the early assumptions we
18 indicated that there would be some individual cases
19 where -- at the local level, where what we said didn't
20 apply.

21 Q. Okay. Let's go on to the next
22 sentence. Again, I have this problem with the heritage
23 guidelines. You say that specific sites would be
24 protected through use of the heritage guidelines and
25 the application of the TMP process. It seems to me

1 that that's a highly speculative statement given the
2 status of the guidelines. Would you agree with that?

3 A. Well, I -- no, I don't think so
4 particularly. I don't think we are doing too bad a job
5 right now based on the process that we've been involved
6 in over the last few years. And I think that, in
7 effect, we are going to improve on that with the
8 guidelines and I think we probably won't be interested
9 in approving them until we're satisfied and the other
10 parties involved in the process are satisfied that they
11 can achieve those kind of results.

12 Q. But still, you have to agree with me
13 that you can't say, on the basis of the evidence that
14 you put forward to date, that these specific sites
15 would be protected through use of the heritage
16 guidelines?

17 A. Well --

18 Q. We can hope that, but there is no
19 evidence to say that that's going to happen?

20 A. I agree based on the fact that they
21 are not yet complete. We are making an assumption that
22 when they are complete they will be up to the job.

23 Q. So, again, this is a slight
24 overstatement of the evidence as you put forward today,
25 an oversimplification, if you will?

1 A. Well, it's making an assumption that
2 the final product will be satisfactory.

3 Q. Okay. I would like to turn now to
4 the next sentence that reads:

5 "The potential for jobs from timber
6 management activities and for wood
7 supplies to native mills would be
8 positive."

9 Just looking then at the first point, you
10 say:

11 "The potential for jobs from timber
12 management activities...would be
13 positive."

14 I am going to go through each of the
15 activities. First looking at renewal, wasn't it your
16 evidence in Panel 11 that there has been a significant
17 decline in the number of native people hired by MNR for
18 tree planting purposes?

19 A. There has been a significant number
20 of people hired by MNR period for tree planting.

21 Q. A significant decline?

22 A. And I think what I said is, so there
23 has been a decline on our part because third-party
24 contractors are doing a lot of that work now. We
25 don't, and the third-party contractors don't collect

1 information that distinguishes between natives and
2 non-natives. But our understanding of the situation is
3 that the number of native people employed in tree
4 planting has declined.

5 Q. So I guess I don't understand how you
6 can say that the potential would be positive, at least
7 with respect to renewal, when you make this statement?

8 A. Well, this is timber management and
9 we are talking about the relative relationship of the
10 various options and, relatively speaking, this option
11 is going to provide more opportunities than any of the
12 others.

13 Q. I am afraid I don't understand. I
14 thought this was just supposed to be an analysis of
15 this particular alternative; i.e., what timber
16 management would achieve, not what it would achieve
17 relative to the other 'alternatives to' the
18 undertaking. It seems to me to be a summary of the
19 advantages and disadvantages of just the one
20 alternative considered by itself.

21 A. Well, I don't think you can really
22 look at it all by itself, you have to look at it in
23 relation to something else. And if, for example, you
24 look at it in relationship to the null hypothesis or
25 alternative A where there wouldn't be any, I think we

1 are saying in relative terms this has the potential to
2 provide jobs.

3 Q. But I thought I understood this to be
4 a summary of what you have put forward to date in Panel
5 10 to 14, not with respect to the other 'alternatives
6 to'?

7 A. Well, I think all we're saying here
8 is that timber management and the activities of timber
9 management have the opportunity, the potential to
10 provide jobs for native communities.

11 Now, there are some factors that we
12 discussed earlier, for example in Panel 11, about the
13 possible implications of the changing role of the
14 Ministry in delivering some of those activities,
15 particularly in renewal and in fact, the third-party
16 contractors are taking which has resulted, we think, in
17 a decline. But the opportunity still exists for
18 employment to occur and that's all we're saying.

19 Q. So when you talk about there being a
20 positive potential that really doesn't mean anything in
21 the abstract? It doesn't transfer into a statement
22 that: Yes, those jobs are going to be available if you
23 adopt the timber management alternative, it is just a
24 potential, realizable or unrealizable?

25 A. There is a potential for jobs to be

1 created and we assume that a certain number of those
2 jobs will be filled or taken by people -- native
3 people.

4 Q. But this doesn't reflect a positive
5 commitment on the part of the Ministry to say that
6 that's what they want to happen. Is that fair?

7 A. It doesn't speak to that at all.

8 Q. Okay. I would like to look briefly
9 at the issue of maintenance. When I looked back at the
10 evidence on maintenance I didn't see any concrete
11 evidence there either to say that jobs for maintenance
12 would go to or are going at present to native people.

13 So again my question is: Isn't this a
14 speculative statement and that the potential may or may
15 not be realized?

16 A. We know that native people are
17 employed in maintenance activities now and we are
18 assuming that they will continue to be, particularly in
19 certain areas. And we are simply saying, with the
20 option of timber management, those job opportunities
21 will continue to exist, at least to some extent.

22 Q. Just briefly looking at the question
23 of access. Again, I am going to go back to Panel 14 of
24 the witness statement at page 424 and I can hopefully
25 drum up another copy. Actually I only have an excerpt

1 of it, I believe the Board has that. It's Panel 14
2 page 424.

3 MS. BLASTORAH: Mr. Chairman, perhaps I
4 could ask Ms. Kleer at this time to advise me what
5 other documents she is going to be referring to so that
6 I can get them here to have them available for the
7 witness.

8 MS. KLEER: Well, I am going to be
9 referring to some other transcripts, but other than
10 that I am not going to be referring to anything else,
11 Ms. Blastorah.

12 THE CHAIRMAN: Do you have all the
13 transcripts here?

14 MS. BLASTORAH: I will have to bring them
15 down. Are those all the transcripts for this panel?

16 MS. KLEER: The transcript would be 172
17 and Volume 7 as well.

18 MS. BLASTORAH: Volume 7 of the
19 transcript?

20 MS. KLEER: (nodding affirmatively)

21 MS. BLASTORAH: Mr. Chairman, I am going
22 to arrange to have that brought down right away, Panel
23 14. I would only indicate that it may be necessary for
24 Mr. Clark to wait to have that available to be able to
25 answer the questions.

1 THE CHAIRMAN: Do you want to wait or do
2 you want to put your question to him and see if he can
3 answer it based on the excerpt?

4 MS. KLEER: Actually, I can just provide
5 him my excerpt and ask him my question. (handed)

6 Q. Okay. If you look at the bottom of
7 the first page there, the first excerpt, I think it is
8 at page 424, it seems to me that there you are saying
9 there is a positive potential that roads could open up
10 employment opportunities to native people. Is that a
11 fair assessment of that last point on page 424?

12 MR. CLARK: A. Which column?

13 Q. On the right-hand column under the
14 measures to enhance, et cetera.

15 MS. BLASTORAH: That was the last
16 paragraph you said?

17 MS. KLEER: Yes, on page 424.

18 MS. BLASTORAH: Thank you.

19 MR. CLARK: It says:

20 "The above can provide employment
21 opportunities for native people resulting
22 in increased benefits to local businesses
23 and communities."

24 MS. KLEER: Q. Yes, that's the one I'm
25 referring to. So that indicates a positive potential?

1 MR. CLARK: A. That's right.

2 Q. Now, if you go to the next page, page
3 425 at the top, the first bullet there seems to
4 indicate to me that there is also a potential for a
5 loss of jobs, at least traditional employment loss
6 because of roads?

7 A. Yes.

8 Q. So again, if you balance those off,
9 depending upon a particular community, the effect of
10 opening up roads might be negative in terms of the
11 impact on jobs. Is that fair to say?

12 A. Absolutely. It would depend on the
13 community and what their particular aspirations were.

14 Q. So then this statement about the
15 potential being positive, the statement at page 64,
16 again is an overall statement that doesn't really apply
17 to a particular community, it is just meant to be a
18 summary; is that correct?

19 A. It is a summary and it is also based
20 on the realization that in the area of the undertaking,
21 and particularly in the NAN area, most of the NAN
22 communities are already road accessible and we believe
23 that the patterns of use that we've witnessed indicate
24 that trappers, hunters, many people make good use of
25 the roads and for that reason alone they may be

1 extremely beneficial.

2 Now, we have pointed out I think in our
3 evidence that there are instances where they may be
4 viewed as negative as well.

5 Q. So then I'm still left with this
6 unsettling feeling about this sentence, it talks about
7 there being a positive potential. It seems to me that,
8 again, this is an oversimplification of what the
9 reality is; i.e., there is a great possibility that the
10 potential might be negative for a particular NAN
11 community, at least with respect to access?

12 A. Oh, I don't deny that for a minute.
13 I go back to my earlier evidence, when you are looking
14 at an area the size of the undertaking you have to
15 generalize and, in doing so, there may be individual
16 cases where what you say doesn't apply, and I think we
17 were pretty careful to point that out in our lead
18 evidence and in the witness statement itself.

19 We are saying on balance, based on the
20 existing situation where the majority of the
21 communities are already road accessible and what we
22 view as the potential positive benefits that I think
23 are currently being realized by both natives and
24 non-natives with respect to, for example, trapping and
25 commercial fishing where road access has provided real

1 opportunities for cutting costs associated with those
2 activities, that we think there is a potential positive
3 benefit overall, notwithstanding the fact that there
4 may be individual cases where it's viewed in a negative
5 way.

6 Q. Okay. I would like to turn now to
7 the second part of that sentence that talks about the
8 potential for wood supplies to native mills also being
9 a positive potential.

10 What evidence has MNR provided to date
11 which supports the conclusion that this is a positive
12 potential?

13 A. Can you just point out...

14 Q. I am still looking at the same
15 sentence that begins: "The potential for jobs from
16 timber management activities..." at page 64 of the
17 witness statement. It seems it has to be read to say
18 that the potential for wood supply to native mills
19 would be positive as well, and I am asking what
20 evidence there is to support that?

21 A. Well, I think most of the evidence we
22 have led to date and to some extent as we discussed
23 this morning, in the context that that particular
24 option implies that through timber management we can
25 achieve the purpose of the undertaking in a more

1 satisfactory manner and, because of that, the potential
2 for making wood available to native people would be
3 greater.

4 Q. Okay. I would like to just ask a few
5 questions about some evidence again that was in Panel
6 10 at Table 32 which you have in front of you.

7 Within an area where a native community
8 is within an FMA area or within a company management
9 unit area, is it true that the possibility for wood for
10 native mills is entirely dependent upon whether the
11 licence holder agrees to enter into a third-party
12 agreement?

13 A. I believe generally that's the case.
14 I don't know whether anyone else on the panel can help
15 me with that.

16 MR. ARMSON: A. Mr. Clark I believe has
17 stated it correctly.

18 Q. And, in some cases, is it not true
19 that companies who hold these licences have not agreed
20 to enter into third-party negotiation?

21 MR. CLARK: A. That may be the case.

22 Q. Well, it seems to me again that we
23 are left with this positive potential language that
24 doesn't really translate into reality on the ground.
25 Is that a fair assessment?

1 Because if you say there is a positive
2 potential, it seems to me that there should be
3 something in place that is going to ensure that
4 happens, and at least my reading of the evidence is,
5 you haven't at all addressed this issue of how MNR
6 might influence the process of entering into
7 third-party negotiations.

8 A. No, we haven't.

9 THE CHAIRMAN: No you haven't what; no,
10 you haven't addressed it or no you haven't --

11 MR. CLARK: We haven't addressed it in
12 our evidence, no.

13 MS. KLEER: Q. Well, given that the area
14 of the undertaking includes or it is intended to
15 include at least 70 per cent -- or 70 per cent of it is
16 intended to be covered by FMAs and at present 67 per
17 cent of it is covered by FMAs, it seems to me that that
18 potential for third-party negotiation, unless a company
19 agrees to enter into those negotiations, could be --
20 well, it wouldn't be positive, it wouldn't exist unless
21 that company agreed to enter into the third-party
22 negotiations.

23 What I am suggesting is that there is not
24 much available there?

25 MR. CLARK: A. What you're saying is

1 there are no guarantees.

2 Q. That's right.

3 A. I would agree.

4 Q. And MNR doesn't intend to or hasn't
5 put any evidence to date as to how they might influence
6 that?

7 A. No, we haven't.

8 Q. Also --

9 A. We have, however, indicated in a
10 number of panels -- and I can recall in Panel 10 where
11 we did include a number of examples of instances where
12 native communities and native development corporations
13 were directly involved in timber management activities.

14 And I guess the point I would make is
15 that they are quite extensive. So that based on
16 existing practice, what's really happening right now,
17 we believe the potential exists for continued
18 involvement by native people.

19 Q. How many communities were you looking
20 at in your former evidence; do you recall?

21 A. If you don't mind I will just check.
22 I have a number of examples, for example, that I
23 think - and I can't recall the details of whether or
24 not this was dealt with in -- all the details were
25 dealt with in Panel 10 or not - where there were native

1 logging operations identified off the reserve
2 particularly in the northwest region, the Islington
3 Band on the Minaki CMU, Grassy Narrows on the Lake of
4 the Woods FMA, Eagle Lake Band on the Dryden CMU,
5 Wabigoon on the Dryden CMU.

6 There were quite a number of examples in
7 this situation, the Gull Lake situation on the west
8 side of Lake Nipigon were examples that we identified
9 in earlier evidence of, for example, native logging
10 operations. And the only reason I bring this up is the
11 implication seems to be that native people aren't going
12 to be able to find their way into this enterprise, and
13 I think the point I am making is that they are there
14 and there are some significant operations and some very
15 successful ones as well.

16 Q. Now, you may recall -- first of all,
17 have you reviewed the cross-examinations of Mr. Monzon
18 and Mr. Douglas in Panel 1?

19 MR. CLARK: A. Portions of it.

20 Q. All right, I will ask you. Do you
21 recall their evidence about making or proposing some
22 sort of alternative scheme to make wood available in
23 small amounts to native communities north of the
24 present area of the undertaking?

25 Do you recall that evidence?

1 A. Very generally, yes.

2 Q. Can you say whether or not MNR has
3 put forward any evidence to date of how that
4 alternative scheme might be effected -- effected not
5 affected?

6 A. I may have to defer to Mr. Bisschop
7 here. He has already led some evidence on this, I
8 guess last week.

9 MR. BISSCHOP: A. Last week in response
10 to some questions and some discussion with the Board on
11 this subject, we indicated that the question we were
12 addressing north of the area of the undertaking was
13 environmental assessment coverage for what I would term
14 small scale, predominantly local use, harvest
15 operations in the area north of the area of the
16 undertaking.

17 And the way that we, approximately two
18 years ago, put our minds to addressing that
19 environmental assessment coverage question was to
20 pursue the idea of an exemption for those small scale
21 activities under the Environmental Assessment Act. And
22 at that time we produced what I would refer to as some
23 very preliminary papers on that, that we approached the
24 Environmental Assessment Branch about, basically
25 seeking exemption coverage under the Act for those

1 small scale activities, and the intent was to respond
2 to requests that we had been receiving, particularly in
3 our northwest region, from primarily but not
4 exclusively native communities north of the area of the
5 undertaking to carry out harvest activities.

6 We didn't want to have -- we didn't feel
7 that it was necessary to have the full requirements,
8 for example, of our Class EA planning provisions for
9 those activities and we sought, through initiating
10 discussions with Ministry of the Environment, to seek
11 different coverage under the Act through an exemption
12 order.

13 Now, I indicated last week as well that
14 as far as I am aware, and because I certainly haven't
15 been involved personally, I don't think that overture
16 has gone anywhere in the last year and a half in terms
17 of further developments with the Ministry of the
18 Environment.

19 Q. Is it fair to say that the exemption
20 order was only to apply north of the area of the
21 undertaking?

22 A. Yes, it was for small scale harvest
23 operations north of the area of the undertaking in
24 order to get proper coverage under the Environmental
25 Assessment Act because there was no coverage at that

1 time, and there is not now.

2 Q. And there has been nothing put
3 forward that would deal with making wood available on a
4 small scale south of the present northern boundary of
5 the area of the undertaking?

6 A. No, that wasn't part of the effort at
7 all.

8 Q. Going back to page 64, am I to read
9 this statement then about wood supplies to native mills
10 having a positive potential as being an indication that
11 there is any positive MNR policy that would make that
12 wood available in the area of the undertaking?

13 MR. CLARK: A. No. All we are saying is
14 that generalizing across the area of the undertaking,
15 that particular alternative would provide greater
16 continuity and predictability in wood supply and,
17 therefore, provide better opportunities for native
18 people and others to be involved in timber management
19 activities.

20 You have to understand that this has been
21 looked at in the context of other alternatives that are
22 fairly severe, for example the null hypothesis where
23 there would be perhaps no opportunity or a very limited
24 one, and the other two which would still be
25 significantly limited, particularly in the long term.

1 Q. Okay. I would like to ask you a few
2 questions, Mr. Bisschop, at this time.

3 MS. KLEER: I don't know if the Board
4 wants to take a break.

5 THE CHAIRMAN: I think we might as well
6 break, if it is convenient.

7 MS. KLEER: Yes.

8 THE CHAIRMAN: 20 minutes.

9 ---Recess taken at 3:15 p.m.

10 ---On resuming at 3:45 p.m.

11 THE CHAIRMAN: Be seated, please.

12 MS. KLEER: Q. Mr. Clark, I just have a
13 quick point of clarification on that list that you gave
14 us earlier of -- I will repeat my question, Mr. Clark.

15 You gave us a list earlier of places in
16 the northwest region where native logging was being
17 carried out. Sir, can you clarify whether any of the
18 examples that you have given were examples of NAN
19 communities?

20 MR. CLARK: A. I can't say just offhand.
21 I think I would have to compare this list against a
22 list of NAN communities. I don't have them listed by
23 their affiliation.

24 Q. All right. Perhaps I can have an
25 undertaking then for you to check that. Our

1 understanding of it is they aren't NAN communities, but
2 we would like clarification of that.

3 A. Okay, that is fine.

4 MS. BLASTORAH: Mr. Chairman, just so the
5 undertaking is clear on the record. We will advise Ms.
6 Kleer if it is not the case -- or, if it is the case,
7 that any of those are NAN communities. She has
8 indicated her understanding is that none of those are,
9 we will advise her if that is not the case.

10 MS. KLEER: I think I understand that.

11 MR. CLARK: And I should point out that
12 the list that I referenced was just for the
13 northwestern region.

14 MS. KLEER: Q. All right. Now, again
15 just looking at that list, were any of the examples
16 that you gave examples of third-party licence
17 negotiations or were they some other animal?

18 A. I think there were some
19 Order-in-Council licences and some district cutting
20 licences.

21 Q. And, again, could I have an
22 undertaking that would specify what the nature of those
23 licences were?

24 MR. FREIDIN: Yes.

25 MS. KLEER: Thank you.

1 Q. Okay. Then, Mr. Bisschop, I would
2 like to ask you a few questions, and this is looking
3 primarily at term and condition 58(iv) dealing with
4 amendments to the area of the undertaking.

5 As a first point then, is it realistic to
6 say, and is it fair to say, that any additions to the
7 area of the undertaking are going to be north of the
8 present northern boundary of the area?

9 MR. BISSCHOP: A. Yes, that's correct.
10 It's not likely there would be any additions to the
11 south.

12 Q. Except if you want to log in Toronto
13 somewhere perhaps?

14 A. Well, it would have to be -- the
15 undertaking applies to Crown land.

16 Q. That's right.

17 A. And there is little Crown land to the
18 south that would warrant creation of a management unit.

19 Q. Okay. I am just going to try and
20 understand and clarify what your evidence was with
21 respect to public involvement.

22 Now, as I understood it, it was your
23 evidence that the Ministry of the Environment could
24 determine that an amendment to the area was a change in
25 the undertaking which would result, pursuant to Section

1 17, in application of the Environmental Assessment Act.
2 Is that correct; i.e., that it could result in a
3 determination by the Minister?

4 A. I don't recall the exact wording.
5 Could you repeat -- were you reading the transcript
6 there?

7 Q. No, I am trying to summarize just so
8 that I understand, and perhaps I can refer to the
9 transcript, Volume 172 at page 30590.

10 My understanding of it was that you were
11 saying that in some cases an amendment to the area of
12 the undertaking could be considered to be a change
13 subject to Section 17 of the Act and, therefore,
14 subject fully to the provisions of the Environmental
15 Assessment Act?

16 A. Yes, that's correct.

17 Q. And then in some other cases it might
18 not be a change subject to Section 17; is that correct?

19 A. The explanation we gave on that was
20 that in other cases the Minister of the Environment may
21 determine that the change is relatively minor and,
22 therefore, would not require full application of the
23 requirements of the Act as Section 17 would provide.

24 Q. Now, I believe we have talked about
25 today, it was given in evidence earlier, that there is

1 a proposed amendment to this term and condition that
2 would provide for public notice before the Minister's
3 decision is made as to whether or not the amendment
4 should proceed; is that correct?

5 A. That's correct. The intention, and
6 my understanding of the agreement between the two
7 ministries, is that upon receiving a request from MNR
8 and before finalizing a decision to approve that
9 amendment, the Minister of the Environment would issue
10 a public notice inviting public review of the proposed
11 amendment.

12 Q. Let me be quite clear. That public
13 notice wouldn't provide for an opportunity for the
14 public to require a hearing; would it?

15 A. In that instance, no, I don't believe
16 so. The intent with that agreement, as I understand
17 it, is that the Ministry of the Environment would issue
18 that notice when they had already made a decision that
19 they wished to approve or were agreeable to approve the
20 requested amendment, and before that decision became
21 final they would seek any public comments.

22 Now, I don't believe the intent there is
23 that, if you will, the full provisions of Section 17
24 then would apply. So I don't believe the opportunity
25 for a hearing request would be envisaged in that

1 example.

2 MS. KLEER: Perhaps, Mr. Freidin, since
3 you are more aware of what the content of that is, you
4 could address that question.

5 MR. FREIDIN: Well, I think the position
6 is that a person who received a notification as
7 contemplated could make representations to the Minister
8 to exercise his discretion in accordance or as
9 contemplated in -- one of the ways contemplated by term
10 and condition 59(c); and, that is, to require a public
11 review or refer the amendment to the Environmental
12 Assessment Board for a decision, et cetera. I think in
13 terms of -- that would be the extent to which they
14 could require it.

15 If you are asking whether the ability to
16 require it would be similar to the provision in the
17 Environmental Assessment Act which talks about what the
18 Minister does when there is a request for a hearing,
19 then the position of the Ministry is that it would be a
20 different situation. The decision of the Minister
21 would not be necessarily affected by that section of
22 the Act.

23 MS. KLEER: So it would be within his
24 discretion then?

25 MR. FREIDIN: That's correct.

1 THE CHAIRMAN: When you say it would be
2 within his discretion, is it an unfettered discretion
3 or is it the same discretion that the Minister has now
4 when faced with a request for a hearing; and, that is,
5 unless he can justify it on grounds that it is
6 frivolous and vexatious, unnecessary or will cause
7 undue delay, he shall refer it to the Board for a
8 hearing.

9 MR. FREIDIN: I think it would basically
10 be the same criteria, and the Minister is going to have
11 to determine if it's frivolous or vexatious or not
12 required in the circumstances; if not required in the
13 circumstances is something different than frivolous and
14 vexatious.

15 THE CHAIRMAN: No, but I think there is a
16 basic difference in law, Mr. Freidin, in the sense that
17 if as a result of the notice provisions contemplated by
18 MNR, presumably agreed to by MOE, you are giving notice
19 of a request for an amendment but it does not fall
20 within Section 17 of the Act, then the other provisions
21 of the Act don't necessarily apply, including the
22 Section 12 provisions where the Minister must refer it
23 for a hearing unless he can fall within those three
24 exceptions.

25 And it would seem to me that if you are

1 not within the provisions of the Act that his
2 discretion could be much wider, if that is what is
3 contemplated; in other words, he doesn't have to
4 justify it as being unnecessary or causing undue delay
5 or frivolous and vexatious, he could say that based on
6 the facts in this particular instance I am not going to
7 refer it for a hearing, period.

8 MR. FREIDIN: That's correct. And it
9 would be the submission of the Ministry that the
10 Minister in the situation contemplated would have that
11 wider discretion.

12 MS. KLEER: All right. I have gotten the
13 clarification I need.

14 Q. I would like to turn to page 30604 of
15 the transcript, Volume 1272. Mr. Bisschop, you
16 answered in response to the question of Mr. Freidin
17 that -- well, the question was:

18 "Mr. Bisschop, do you believe that this
19 is a reasonable way to deal with that
20 subject matter?" And this refers to the
21 whole amendment process. Your answer was:

22 "We believe it is, Mr. Chairman, in the
23 sense that the undertaking of timber
24 management, whether it's north of that
25 line or south of that line, would be

1 conducted in a similar way and the
2 process that we put before the Board to
3 plan operations and carry out the
4 implementation of operations in the area
5 south of the line is equally applicable
6 in the area to the area north of the
7 line."

8 Now, that statement, I take it, means
9 that you presume that the timber management planning
10 process will apply -- well, if it applies north of the
11 line, it will apply in the same way as it applies south
12 of the line; is that correct?

13 MR. BISSCHOP: A. Yes, that's correct.

14 Q. I would like to turn with you to the
15 cross-examination of Mr. Monzon in Volume 7 which I
16 hope Ms. Blastorah has located.

17 MS. KLEER: Thank you.

18 Q. I would like to turn to page 1212 and
19 at the bottom of page 1212 and I will just read it
20 here:

21 "The management units north of the - and
22 I am not an expert - but the management
23 units to my understanding that would be
24 between the red line, the June, '87 and
25 the line of 1985, would have been

1 inactive, there would have been no timber
2 management activity on them, and there
3 was not seen to be any reason to include
4 them as part of the undertaking at this
5 point in time."

6 And it also goes on to say:

7 "Together with that fact is the fact that
8 one of the things that we are concerned
9 about with respect to northern Ontario
10 was the available supply of timber for
11 the native people in the various native
12 communities and we wanted to ensure that
13 there was not an onerous process that we
14 or the native people would have to go
15 through in making that timber available."

16 And is that still -- do you agree with
17 that position, Mr. Bisschop?

18 A. With the position in the second
19 paragraph?

20 Q. Yes.

21 A. Yes, and that is the basis, as I
22 explained earlier, for the approach we took in seeking
23 an exemption north of the area of the management units
24 for the purposes of the small scale local use harvest
25 activities.

1 Q. So what you are saying then is that
2 this exemption order isn't going to apply across the
3 area north of the present area of the undertaking, you
4 are limiting it to small uses?

5 A. It would apply to individual
6 situations of requests to harvest wood anywhere north
7 of that area of the undertaking, yes, but it would
8 apply to specific situations.

9 Q. So that the timber management
10 planning would still apply to anything outside of those
11 specific situations if it were decided that a licence
12 should be entered into up there?

13 A. Maybe I should step back.

14 THE CHAIRMAN: Well, just hold on.
15 We are not saying necessarily, are we, that the timber
16 management planning process, if approved for the area
17 of the undertaking south of 50, would apply to the area
18 north of 50, aside from the specific situations for
19 which you are seeking exemption?

20 MR. BISSCHOP: Mr. Chairman, I can recall
21 even when Mr. Monzon explained this some two years ago
22 almost my concern about how it was being explained, and
23 I think it might be advisable if I try to step right
24 back again and try to explain it clearly.

25 THE CHAIRMAN: Because that goes back to

1 our earlier concerns expressed a few days ago. If we
2 are trying to apply this planning process north of 50,
3 not to the specific native consumption uses for which
4 you are seeking exemption from the proceeding, but if
5 it's meant to apply in terms of granting large scale
6 licences north of 50 outside the area of the
7 undertaking for application of the process which may be
8 approved for within the area of the undertaking, the
9 Board has some concern that we haven't seen through
10 evidence, evidence of environmental impacts of this
11 planning process on north of 50, and they might well be
12 different from what we are seeing as to the impacts
13 within the area of the undertaking.

14 MS. KLEER: In fact, Mr. Chairman, that
15 is precisely what I am getting to.

16 THE CHAIRMAN: Now, we want some
17 assurance that that is not what you are seeking or, if
18 it is, then the area of the undertaking quite frankly
19 should probably be enlarged now with evidence to
20 support it.

21 MR. BISSCHOP: And, if I could, Mr.
22 Chairman, I think it can be helpful if I go back to
23 explain, first of all, why the change from 1985 to
24 1987, put the exemption request in that context, and
25 then put our term and condition in that context as

1 well.

2 In 1985 -- the 1985 version of the EA
3 there were, I believe the number were seven additional
4 management units on the north end of the area of the
5 undertaking included. Of those seven I believe only
6 three were officially designated as forest management
7 units, the other four were for MNR internal purposes,
8 identified as forest management units for primarily the
9 purposes of assembling a forest resource inventory.

10 So although we had seven units north of
11 the line, there were only three that really had any
12 official status, and there were no operations occurring
13 on any of those units, they were inactive units as Mr.
14 Hunter -- I mean, Mr. Monzon explained. And for all
15 intents and purposes, as we looked into the future, we
16 saw that those units would remain inactive, so we made
17 the decision in 1987 that we would define the area of
18 the undertaking as the area of active forest management
19 units. And that is the basis for moving the line
20 south.

21 And we also initiated, and I am not sure
22 of the status of it, in effect, de-designation of the
23 three units that I talked about that had some official
24 status, because we weren't sure whether or not the
25 actual geography defined by those units would remain

1 the same in the future. First of all, we knew that no
2 operations were going to be occurring, but even if they
3 were in the future, we may choose to change the
4 boundaries of the units themselves.

5 Anyway, we redefined the area of forest
6 management units in June of '87. I can't recall the
7 timing, I think it's probably later that year, that we,
8 through a request from our northwestern region because
9 of requests that they had been receiving for what I
10 referred to as small scale, local use harvest
11 operations, our northwestern region asked us to address
12 the question of environmental assessment coverage for
13 those requested operations north of the area of the
14 undertaking.

15 Obviously the Class EA was not intended
16 to apply and we had no other Environmental Assessment
17 Act coverage so we initiated the idea of the exemption
18 order, and I think I have explained enough about that,
19 what it was intended to do, and that it has not yet
20 reached any resolution.

21 So in the remainder of that area north of
22 the June, '87 boundary there are no operations
23 occurring. We had these requests that we were trying
24 to address it through the exemption order, the intent
25 was to have reasonable minimal Environmental Assessment

1 Act requirements.

2 We introduced term and condition 59 to
3 address the possibility that we may at some point in
4 the future in respect to requests for operations north
5 of the line or in response to a realization that those
6 operations are of such a scale that they really ought
7 to be considered as timber management not small scale
8 harvest operations, what kind of Environmental
9 Assessment Act coverage ought to apply then.

10 And we felt that the exemption order, the
11 exemption approach was not appropriate as adequate
12 Environmental Assessment Act coverage. So the idea
13 would be then to, either through creation of new
14 management units or perhaps even more realistically
15 extension of some of the existing units northward,
16 provide for that Environmental Assessment Act coverage
17 through applying the provisions of the Class EA which
18 would have gone through the entire hearing that led to
19 a decision on the acceptability of the Class EA and
20 would have formed a basis for -- that hearing would
21 have formed a basis for arguing that that kind of
22 decision and that kind of approach to Environmental
23 Assessment Act coverage would be appropriate for that
24 extension to the north, if you will.

25 THE CHAIRMAN: All right. But in the

1 absence of the fact that you haven't led evidence as to
2 the environmental impact for large scale operations
3 north of 50, would you not agree -- or would you
4 agree - I guess we will put it as a question - that the
5 better approach might be to say that Section 17
6 applies, particularly 17(b) which says, after approval
7 of the Class EA, if there is a change in the
8 undertaking that does not conform to any term and
9 condition imposed, that you are back under the Act.

10 It then means effectively that may be a
11 new environmental assessment is required or asked for
12 large scale operations north of 50, but should the
13 Minister come to the conclusion - this is the Minister
14 of the Environment - that this Class EA is really
15 sufficient to cover the environmental impact concerns
16 north of 50, he could use his exemption powers under 29
17 to get you out of the situation where you would have to
18 go through another Class EA or even a full Class EA
19 because, under Section 29, the Minister of the
20 Environment has the powers to exempt not only the
21 undertaking but any part of it from the provisions of
22 the Act, and that way there would be some assurance
23 that at least the Minister of the Environment was
24 content that whatever planning process was developed
25 under the Class EA in this hearing should apply north

1 of 50 for large scale operations without the necessity
2 of a further hearing or a further EA.

3 That would alleviate, I would suggest,
4 some concerns of the Board and, if I am not mistaken,
5 some of the concerns of other parties as well, rather
6 than the way you have approached it under condition 59.

7 MR. BISSCHOP: And I agree, Mr. Chairman.
8 I recognize that as another way of dealing with it and
9 it certainly is a way to deal with the concerns the
10 Board has and other parties have.

11 I would suggest that it's my view, my
12 personal view that faced with that situation the
13 Ministry of Natural Resources would in fact make those
14 overtures to the Minister of the Environment.

15 THE CHAIRMAN: But you can make the
16 overtures, but it is up to the Minister of the
17 Environment to decide whether or not the full
18 application of the Act should be imposed.

19 MR. BISSCHOP: Exactly, and part of our
20 submissions would be that there has been an extensive
21 hearing on this subject and that, in our view, the
22 differences between the area south of the line --
23 immediately south of the line and immediately north of
24 the line are not so substantial as to require something
25 different.

1 THE CHAIRMAN: That's fine. But to
2 convince the Minister of the Environment that's so, the
3 protection that's there is that the Environmental
4 Assessment Act legislation applies to the full unless
5 the Minister decides to use his exemption powers under
6 Section 29.

7 MR. BISSCHOP: I agree.

8 MR. FREIDIN: Mr. Chairman, just to be
9 clear. I understand exactly the point that you are
10 making. I would just indicate that accepting the
11 premise upon which you made the suggestion, one way of
12 dealing with that concern, other than having all
13 applications for an amendment which would extend the
14 area of the undertaking being dealt with under Section
15 17, would be to call further evidence to indicate that
16 an area north of the present northern boundary, whether
17 it is 50 kilometres, 100 kilometres or right up to
18 James Bay, was such that the process would be
19 reasonable, the conditions would be the same. That's
20 another way of dealing with it.

21 I am just indicating now that I do not
22 want to be taken as waiving the right to call that
23 evidence, if we see fit, as a means of addressing the
24 concern of the Board to support the amendment procedure
25 presently put forward in Section 59.

1 THE CHAIRMAN: All right. That would be
2 a way of dealing with it with these cautionary notes:
3 (a) you haven't presented the evidence for that
4 proposition, the parties haven't had an opportunity to
5 cross-examine that evidence, and I think in the Board's
6 view, although not ruling it out as a possibility, it
7 is a bit late in the day to extend your case to that
8 extent when it could have been done at the outset.

9 In other words, the EA as formulated
10 could have included north of 50 and all the evidence to
11 support this planning process applying north of 50.

12 In effect, what we are doing, Mr.
13 Freidin, is coming back at some stage in the game and
14 saying: Okay, let's do another class environmental
15 assessment north of 50. The evidence might be the same
16 or similar, but we are starting over again and all the
17 parties must have the opportunity of cross-examining,
18 et cetera, and that's, at least in the opinion of this
19 Board member, not the most expeditious way of going.

20 MR. FREIDIN: I hear you, Mr. Chairman,
21 and I think that we will argue this matter perhaps more
22 fully if it is decided that we wished to call that kind
23 of evidence. At this stage it is a hypothetical and --

24 THE CHAIRMAN: That doesn't mean that we
25 are going to allow it.

1 MR. FREIDIN: No, and I am sure you are
2 not indicating you won't without submissions.

3 MS. KLEER: Well, I guess I would add my
4 submission to that. Quite simply put: The notices
5 that went out at the beginning of the hearing refer to
6 an area of the undertaking on a map that is not this
7 area, and we would have to redo the notices and redo
8 the hearing.

9 THE CHAIRMAN: Well, not even that, you
10 get into more problems than just redoing the notice.
11 It would require, in the opinion of the Board, a
12 supplementary notice but, more importantly, it would
13 likely bring parties into this hearing that have not
14 been here for the first part of it.

15 MS. KLEER: And I would suggest, if I
16 may, that our client, some of the communities might, as
17 Windigo Tribal counsel has done, seek separate
18 representation because it is our position that they are
19 quite different.

20 MR. FREIDIN: Mr. Chairman, I don't want
21 to argue the matter, I have no further submissions. I
22 don't think this is the time to argue it. We haven't
23 made any indication we are going to call that evidence.

24 THE CHAIRMAN: Let's just suggest you
25 have got a very steep uphill battle to put that one

1 across.

2 MR. FREIDIN: Yes, Mr. Chairman.

3 MS. KLEER: Q. If I can get some
4 clarification from you, Mr. Bisschop. What's your
5 opinion of what constitutes the area of the
6 undertaking; is it what appears on all the maps that we
7 have seen today?

8 MR. BISSCHOP: A. I was going to refrain
9 from this, but I must say that we did indicate very
10 clearly in the Class EA itself on page 11, starting at
11 line 1, the possibility of future expansion.

12 Q. But let me ask you: If somebody
13 looks at Figure 3.2-1 which says 'area of the
14 undertaking', and if somebody from the public came and
15 looked at the maps, would they understand that the area
16 of the undertaking was something that could be expanded
17 north?

18 A. Not just by looking at the map, no,
19 they would have to also see page 11.

20 Q. Just to look at the wording of the
21 notice. I believe this must be an exhibit that was put
22 in at the beginning. I just want to refer to the clear
23 indication of what is the area of the undertaking on
24 the notice and, furthermore, at page 3 of that notice
25 it says:

1 "Copies of the Class EA, the government's
2 review of the Class EA, and a detailed
3 map of the area of the undertaking and
4 any notices may be inspected during
5 normal business hours at the following
6 offices..." and then it gives the
7 addresses of the offices.

8 THE CHAIRMAN: Ms. Kleer, I think you can
9 take it as a given that that notice, in the Board's
10 view, would be insufficient to include an expansion to
11 the area of the undertaking, that notice as sent out.

12 MR. FREIDIN: Are you making that ruling
13 without submissions, Mr. Chairman?

14 THE CHAIRMAN: No, it is not a ruling--

15 MR. FREIDIN: Thank you.

16 THE CHAIRMAN: --but based on the notice
17 that went out, it is reasonably clear as to what the
18 area of the undertaking is depicted as.

19 And perhaps you can argue it more fully
20 at another time, Mr. Freidin, but I don't think we have
21 to tell you -- the reason I am saying that now is I
22 don't think we have to spend a lot of time on that
23 notice question at this time.

24 MS. KLEER: Well, I guess in terms of our
25 presentation here -- well, actually our presentation in

1 the future to the Board and in fact what we have done
2 in the past, my clients would like some clarification
3 at this point, and perhaps we need a motion - I am not
4 suggesting that - but I am wondering whether we are
5 going to have to do that, because it's going to affect
6 the way we put in our case.

7 And I don't want to do another motion,
8 but I don't know if we can deal with this in
9 negotiations, maybe that's the best way do it, but we
10 do need some clarification.

11 MR. FREIDIN: Let's try negotiation.

12 THE CHAIRMAN: Well, yes, but we don't
13 want to slow down the case once we get back from the
14 negotiations. I mean, it is not going to affect the
15 first couple of panels of the Industry's case, but it
16 will affect the way the other parties, particularly
17 those representing the native groups, how they will
18 prepare their case. And they are preparing their case,
19 Mr. Freidin, as we go along.

20 MR. FREIDIN: Mr. Chairman, it is my
21 intention and my client's intention through
22 negotiations and in negotiations to be very clear as to
23 whether there is any change in the proposition put
24 forward in relation to the extent of the term and
25 condition 59.

1 THE CHAIRMAN: Well, Ms. Kleer, you can
2 wait, or can you wait until after the negotiations?

3 MS. KLEER: Yes.

4 THE CHAIRMAN: And then if it isn't
5 clarified through the negotiation, we will deal with it
6 then.

7 MS. KLEER: That will be satisfactory.

8 THE CHAIRMAN: Very well.

9 MS. KLEER: Q. Okay. I would like to
10 deal briefly with one other matter dealing with north
11 of the area of the undertaking.

12 At page 5 of the Class EA Document, Part
13 I, at the bottom paragraph starting at line 30, and I
14 will just read this into the record:

15 "By June 1, 1987, 29 forest management
16 agreements had been signed covering
17 approximately 67 per cent of Crown lands
18 under timber licence in Ontario. The aim
19 of MNR is to enter into these agreements
20 with a majority of the large licence
21 holders in the province."

22 Perhaps you can't answer this, but at
23 this point is it MNR's intention to enter into FMAs
24 with large licence holders north of the area of the
25 undertaking? Has there been any policy decision made

1 on what type of licences are appropriate north of the
2 area?

3 MR. BISSCHOP: A. My understanding is
4 that there are no -- well, there certainly are no
5 licences north of the area of the undertaking and that
6 there is no, as far as I'm aware, no indication that
7 there are going to be any licences, large licences
8 north of the area of the undertaking.

9 MS. KLEER: Excuse me for a minute.

10 MRS. KOVEN: Excuse me, Mr. Bisschop.
11 Why are you spending resources to do a forest resource
12 inventory if there is no intention to use the timber
13 resources?

14 MR. BISSCHOP: Why was that done?

15 MRS. KOVEN: Why are you doing it, I
16 assume you are doing it still.

17 MR. BISSCHOP: I don't believe there has
18 been -- the seven units I talked about had inventories
19 done, but I don't think any of them are more recent
20 than within the last 10 years.

21 I assume that the inventories were done
22 at that time because of an anticipation that there
23 might be timber management activity in those units, but
24 nothing has ever developed. But I don't think --

25 MRS. KOVEN: Nothing has developed

1 because no companies have indicated an interest in the
2 area?

3 MR. BISSCHOP: Largely I expect that's
4 the reason, yes.

5 THE CHAIRMAN: Well, wouldn't you want an
6 inventory of all Crown lands whether or not there is
7 activity or not?

8 I mean, doesn't that give you the total
9 forest picture in Ontario to say: We have "x" number
10 of trees of "x" number of species located in these
11 places out there. Wouldn't that have to include areas
12 for which there is no activity at the moment or even
13 anticipated?

14 MR. BISSCHOP: That seems logical. I'm
15 not sure, though, that even with the seven units I was
16 talking about that that would have gotten you far
17 enough north in terms of the entire area of forest
18 cover in the province.

19 MR. MARTEL: Is any of that land, part of
20 the land formally held by Reid.

21 MR. BISSCHOP: In the northwestern corner
22 of the province, yes. My understanding is that there
23 are -- there were two Crown units, part of which would
24 have formed part of the proposed Reid tract, but that
25 initiative remains dormant, as far as I'm aware, and

1 has for some time.

2 But, Mr. Chairman, I just want to
3 indicate that even with the forest resource inventory
4 for those seven units, there's still probably forested
5 land north of there that had no inventory and we
6 wouldn't have had a complete forest resources inventory
7 for the entire forested area of the province.

8 MS. KLEER: Okay. I'm just going to make
9 one final comment, if I may. I just want the Board to
10 be aware of the fact that if the proposal is that
11 timber management planning be done north of the line as
12 it is south of the line, our client will have
13 substantial things to say about that.

14 And that ends my submissions and my
15 questions.

16 THE CHAIRMAN: Thank you, Ms. Kleer.

17 Mr. Armson, could I just clarify one
18 question and, that is: Is it the purpose of the FRI as
19 it is presently conducted to only deal with areas which
20 are under timber management? Is that what Dr. Osborn's
21 evidence was?

22 MR. ARMSON: Essentially that's it, Mr.
23 Chairman. There was -- and I was familiar with this
24 although I was not with the Ministry at the time, there
25 was an inventory taken in the area -- well, right

1 through to the Manitoba border and in the area around
2 Pikangikum in the mid 60s, and I was familiar with that
3 because I was doing some studies on fire at the time,
4 and it was really the Reid proposal which then sort of
5 highlighted further inventory in the area north of 50.

6 But by and large if there is not, if you
7 like, a timber value in the sense of timber management,
8 I think Dr. Osborn indicated that there is -- there may
9 be some satellite inventory that might be used, but
10 there is not a forest resources inventory in depth,
11 although historically, as I say, in the mid 60s there
12 was an attempt to extend it, but that really doesn't
13 apply at this time.

14 THE CHAIRMAN: Thank you.

15 MR. FREIDIN: Mr. Chairman, I think Dr.
16 Osborn indicated that although the main purpose was for
17 timber purposes, conducting the FRI, there were other
18 uses of it.

19 THE CHAIRMAN: Well, Mr. Colborne, are
20 you ready to proceed at this time? We have about a
21 half hour roughly before we were going to commence the
22 scoping exercise. I am not sure all the parties are
23 here for the scoping exercise, so we have a half hour
24 to spend. Can you put in that half hour at this time?

25 MR. COLBORNE: Yes, I can. But, Mr.

1 Chairman, I have to catch a plane tomorrow morning, I
2 hope to, at 11:10, so anything you can do to
3 accommodate that, I would appreciate it.

4 THE CHAIRMAN: Very well. How long do
5 you expect to be in total?

6 MR. COLBORNE: No more than two hours,
7 probably considerably less now that I have heard Ms.
8 Kleer's cross-examination.

9 THE CHAIRMAN: Okay. Well, why don't we
10 proceed at this time.

11 ---Discussion off the record

12 THE CHAIRMAN: All right. We are
13 prepared to hear perhaps an hour of your presentation
14 tonight and then go into the scoping exercise because
15 we don't think that will take very long, at least from
16 the Board's perspective, if that will accommodate you,
17 and then start tomorrow and you put in the other hour
18 tomorrow or whatever time is left over.

19 MR. COLBORNE: Thank you, Mr. Chairman.
20 Maybe I will try speaking fast and finish in an hour.

21 THE CHAIRMAN: Very well.

22 MR. FREIDIN: Mr. Chairman, unless the
23 panel has got some objection, if they feel that they
24 are able to proceed after the scoping, before the
25 scoping so we can finish Mr. Colborne tonight, then

1 that's still a possibility. Perhaps we can wait to
2 canvass that later.

3 THE CHAIRMAN: Well, we are suggesting
4 that Mr. Colborne go for an hour before the scoping.
5 We will deal with the scoping at 5:30. If the parties
6 walk in at five o'clock for the scoping, they can just
7 wait a half hour.

8 I guess both parties are here that are
9 going to be dealing with the scoping, the Industry and
10 the Ministry of the Environment, so if we can impose
11 upon the two of you to wait until 5:30.

12 MS. SEABORN: We are here, Mr. Chairman.

13 MR. CASSIDY: It will be our pleasure.

14 THE CHAIRMAN: Consider it done.

15 Mr. Colborne?

16 MR. CASSIDY: Ms. Murphy...

17 THE CHAIRMAN: Ms. Murphy is not around?

18 MR. FREIDIN: No, no.

19 MR. CASSIDY: The price you pay when you
20 are not here.

21 MR. FREIDIN: If you are not here you
22 don't get a say, so there's no objection to that.

23 THE CHAIRMAN: Okay.

24 MR. COLBORNE: Thank you, Mr. Chairman.

25 CROSS-EXAMINATION BY MR. COLBORNE:

1 Q. While it is fresh in my memory, I
2 would like to ask two questions which arise out of
3 notes I took during Ms. Kleer's examination just now
4 and I think that it would be Mr. Clark who would answer
5 these. I think he was the one who answered the
6 original questions.

7 Mr. Clark, when you were being asked
8 about whether or not the Ministry of Natural
9 Resources - perhaps I could put it this way - has any
10 participation in what's included in third-party
11 agreements in terms of whether native communities
12 benefit from them or not, I think that part of your
13 answer to that included this passage which I wrote down
14 verbatim: There are no guarantees.

15 Do you recall saying that?

16 MR. CLARK: A. I do.

17 Q. And do you agree generally with the
18 characterization of the context in which you said that?

19 A. Yes.

20 Q. Okay. Now, I just wanted to clarify.
21 When you say there are no guarantees, you are talking
22 about third-party agreements. With respect to first
23 party; that is, MNR or Crown and licence holders and
24 particularly FMA parties, there are guarantees; right,
25 the guarantees are in the agreements?

1 A. That's correct.

2 Q. So the persons to whom the phrase
3 'there are no guarantees' apply are the persons who you
4 do not contract with directly?

5 A. That's right.

6 Q. One other point. You said this in
7 response to Ms. Kleer's question in relation to -- I
8 think the connection was native saw mills, but the
9 words I noted were 'there are significant operations
10 and successful ones'.

11 Now, maybe you weren't referring just to
12 saw mills, you may have been referring to participation
13 in the industry generally. Perhaps you can just
14 clarify that first.

15 A. That's correct. I think we've led
16 evidence previously and I noted some examples here and
17 there are others where I believe there are good
18 examples of successful native operations, and I think
19 the point I was making is that the assumption I thought
20 was being made that there was no room or opportunity
21 for native people to become involved, and I was simply
22 saying they are involved, they are involved in a
23 significant way.

24 Q. Well, you may be -- if you are here
25 listening to evidence at a later time, you may hear

1 that others have a different opinion. However, I want
2 to clarify that comment: 'there are significant
3 operations and successful ones.'

4 You referred back to Panel 10 and you
5 mentioned four Indian bands which have such operations.
6 My question to you is: If I look to Panel 10, am I
7 going to find an exhaustive list of the 'significant
8 operations and successful ones' carried on by native
9 people?

10 A. No, I don't believe you are.

11 Q. Where could I look to find that?

12 A. I think you would have to look to the
13 Ministry of Natural Resources to provide that
14 information.

15 MR. COLBORNE: This is important.
16 Perhaps it is clear, Mr. Chairman and Members of the
17 Panel, that this is important to the concerns of my
18 client, so I am going to ask for an undertaking that
19 this witness' evidence just now in the previous
20 cross-examination be expanded by way of provision to
21 the parties, or at least to myself, of a complete list
22 of these significant operations and successful ones
23 that the witness has referred to.

24 THE CHAIRMAN: Well, are we going to
25 define what's significant and successful to start with

1 before you can get into a consideration of what's
2 involved in terms of gathering together that list?

3 MR. COLBORNE: I would gladly ask those
4 questions, Mr. Chairman. I don't want to spend a lot
5 of time pursuing this, I know this is not the really
6 the subject of this panel, but it did arise.

7 THE CHAIRMAN: Mr. Clark, how extensive a
8 job would that be to gather together such a list?

9 MR. CLARK: To be quite frank with you, I
10 am not entirely sure. I would like an opportunity to
11 consult before I -- it would mean going to our regions
12 and districts and getting a listing. So it really
13 depends on how far we go here.

14 Are we simply talking about those Bands
15 for which licences have been issued, are we talking
16 about native development corporations that are involved
17 in timber management, are we talking about the number
18 of native people that are involved in silvicultural
19 activities?

20 Some of this information is more readily
21 available than others. It would require that we go to
22 each of our districts and consult with them in terms
23 of --

24 THE CHAIRMAN: See, Mr. Colborne, we can
25 envisage that this will be a very considerable task in

1 view of the fact that there are a number of districts
2 and regions involved. What kind of information do you
3 want; in other words, are you looking at just the
4 licences for which the native communities have been
5 recipients or what?

6 MR. COLBORNE: Well, actually I was more
7 interested in the fact that the statement had been made
8 than anything else because it flies in the face of my
9 investigations and preparations, and the witness did
10 give some examples, and I can go to the transcript to
11 find those, but when I asked him if I could go to a
12 particular part of their evidence he said no it wasn't
13 there.

14 THE CHAIRMAN: Well, the point is --

15 MR. FREIDIN: He said he couldn't go to
16 Panel 10, he didn't say he couldn't go to the rest of
17 the evidence.

18 MR. COLBORNE: Oh, we're playing trick
19 questions now. This will take longer.

20 MR. FREIDIN: Come on, Don.

21 MR. COLBORNE: What about the other
22 panels, sir?

23 THE CHAIRMAN: Well, Mr. Colborne, hold
24 on a second. I don't think his evidence was that Panel
25 10 provides an exhaustive list. He indicated to get a

1 list of those things it would require an investigation
2 at the district and regional level, but he indicated
3 that the examples he gave in Panel 10, in his view, did
4 not contain them all.

5 MR. COLBORNE: Yes. Well, one problem,
6 Mr. Chairman, is that --

7 THE CHAIRMAN: Is that correct, Mr.
8 Clark?

9 MR. CLARK: That is correct. And the one
10 additional comment I would make is that I did refer to
11 other examples that had been made by other witnesses in
12 their evidence in each of the panels dealing with
13 access, harvest, renewal and maintenance.

14 I think more often than not there was at
15 least some reference made to examples of native
16 involvement in those activities.

17 MR. COLBORNE: There are large areas of
18 the undertaking wherein the Indian population; that is,
19 those who are legally Indians, are not represented
20 here. In fact, the larger part of the area of the
21 undertaking falls outside of the territory in which my
22 clients live and outside of the territory in which Ms.
23 Kleer's clients live.

24 So we can do investigation and present
25 evidence here about what happens within the territories

1 of the Indians who we represent, but that leaves a vast
2 area to which this generalization remains on the
3 record.

4 ---Discussion off the record

5 MR. FREIDIN: Can I respond, Mr.
6 Chairman?

7 THE CHAIRMAN: Yes.

8 MR. FREIDIN: Mr. Chairman, I think that
9 you have the evidence of the Ministry on this issue.
10 If there is an absence of some evidence, a shortfall in
11 the evidence, particularly as it affects any party
12 here, they can supplement that information and correct
13 the record if they think it's wrong.

14 But I do not think that it is necessary
15 that the Ministry be compelled to supplement its
16 evidence if, in fact, it feels that the evidence that
17 it has submitted is the evidence on which it is willing
18 to base its case and to have this Board make its
19 assessment. It's as simple as that.

20 MR. COLBORNE: Believe it or not, Mr.
21 Chairman, I think I agree with Mr. Freidin, but perhaps
22 I didn't state clearly my last point.

23 Insofar as my clients are concerned, I'm
24 not going to stand here and say: Go and do some
25 research and tell me about my own clients, I can bring

1 it forward. But there are many, many native
2 communities who are not represented here either
3 directly or indirectly.

4 THE CHAIRMAN: Well, what is the impact
5 of whether there are licences or aren't licences to
6 communities that are beyond the ones you represent and
7 beyond the ones that Ms. Kleer represents? Those are
8 the parties before the Board.

9 MR. COLBORNE: Well, perhaps the only
10 impact is that we do have now on the record this
11 generalization which can only be partially answered and
12 for which the witness cannot refer me back in the
13 evidence to anything definitive.

14 So maybe it just has to stand on the
15 record as the state of the evidence following
16 cross-examination.

17 THE CHAIRMAN: Well, why don't we treat
18 it as a matter upon which the Board will give it the
19 appropriate weight, bearing in mind that there may not
20 be evidence to support that generalization beyond the
21 evidence that has been put forward by the Ministry to
22 the Board.

23 MR. COLBORNE: I think that is quite
24 satisfactory, Mr. Chairman.

25 THE CHAIRMAN: Okay.

1 MR. COLBORNE: Q. Now, gentlemen, I wish
2 to turn more directly to the topics upon which you
3 prepared and have presented evidence. And I have
4 concerns that directly affect my clients, but I would
5 like to begin with a few general questions.

6 MR. COLBORNE: And if I repeat anything
7 that some other parties dealt with, I apologize, Mr.
8 Chairman. I have tried to review the transcripts, but
9 I haven't gone through them all.

10 Q. Now, my general concern is that other
11 alternatives should have been examined. Let me just
12 say that by way of introduction so you understand why I
13 am posing some of these questions, and I am not
14 directing these questions at anybody in particular,
15 this is just generally directed at the panel.

16 Now, most of us here are laypersons in
17 the sense that we are not foresters or planners, but
18 would the panel agree that a layperson who reads the
19 general public literature right now, the newspapers and
20 the magazines, this and that, sees an enormous amount
21 of material on forest management and the future of our
22 forests. You can hardly pick up a popular magazine
23 without finding something on that topic ranging from
24 Doomsday to industry advertisements and so on. Would
25 you agree that this is a matter of great public concern

1 right now?

2 I see some nods. I don't think you are
3 going to quarrel with me on that one.

4 MR. BISSCHOP: A. We agree as well.

5 THE CHAIRMAN: I think Mr. Cassidy was
6 expressing some concern about being described in the
7 same sentence as Doomsday.

8 MR. COLBORNE: Oh, I thought that was the
9 opposite extreme, I intended it to be at that opposite
10 end of the range from Doomsday scenarios.

11 Q. Now, would you agree that common ones
12 are two that, I hope I gave you notice that I was going
13 to ask this, the common ones are very highly intensive
14 management - this is what I see when I read magazine
15 articles and so on and I can't assess whether they are
16 right or wrong - but highly intensive management where
17 you're not looking at vast areas and saying: We will
18 cut down so many millions of cubic feet of wood here in
19 the next few years and so on and so forth, but you are
20 looking at the land in a much more detailed small scale
21 way.

22 Would you agree that that's one of them
23 that is discussed in the popular literature? I am not
24 asking whether it has any validity or not, would you
25 agree that that is one that is discussed in the popular

1 literature?

2 MR. ARMSON: A. Yes.

3 MR. BISSCHOP: A. Mr. Colborne, I
4 wouldn't express that into the terminology we are
5 dealing with as an alternative to what we are putting
6 forward, rather as an examination of various levels of
7 intensity within timber management as we describe it.

8 Q. Well, maybe we can get to that right
9 now then. I am not clear about the distinction between
10 'alternatives to' and alternative methods and, in the
11 context of what we are doing here, I am not clear that
12 the line is as precise as you suggest it is.

13 THE CHAIRMAN: Join the club, Mr.
14 Colborne.

15 MR. COLBORNE: And so maybe I will just
16 ask you for a ruling on this, Mr. Chairman. I simply
17 want to ask these people why that kind of thing that
18 you read about practically every time you look at a
19 magazine article was not treated as one of the
20 alternatives.

21 If I am out of line and that is an
22 alternative method and I shouldn't be asking the
23 question, fine, I will accept the ruling.

24 THE CHAIRMAN: Well, I don't think the
25 Board can make a ruling in that kind of context, Mr.

1 Colborne, because we have been discussing this not only
2 in this hearing but it's a matter that is raised in any
3 kind of environmental assessment hearing, as to what is
4 the differentiation.

5 The Ministry gave its view of what that
6 distinction was I think in the evidence put forward by
7 Mr. Bisschop, we have the Act which doesn't provide a
8 whole lot of guidance, I would suggest, we have
9 guidelines for the preparation which provide some
10 guidance but which don't necessarily definitively
11 determine what the distinction is, and your client may
12 also have a view as to what the distinction should be.

13 MR. FREIDIN: Well, Mr. Chairman, I have
14 no objection to the question. Mr. Bisschop did lead
15 evidence on how intensity of management was in fact
16 treated for the purposes of preparing this evidence. I
17 have no problem with him providing that evidence again.

18 THE CHAIRMAN: No, but I don't think that
19 the Board is willing at this stage to make a ruling as
20 to whether or not the way Mr. Bisschop defined it is in
21 fact an alternative method as opposed to an
22 'alternative to'. I am not sure the Board wants to get
23 into that kind of ruling because those lines in the
24 Board's view are blurred, there is no uniformity of
25 approach amongst proponents which prepare environmental

1 assessments in the first place, and I would suggest
2 there is no universality in terms of the way anyone
3 dealing with this process accepts that terminology.

4 I think it may be something we will have
5 to deal with at the end of the day in terms of
6 ascertaining whether the proponent has met the
7 requirements of Section 5(3), but with respect to the
8 Board placing its stamp of approval on conditions of
9 approval, whether or not those conditions fall into
10 alternative methods or should properly have been
11 'alternatives to', I would suggest won't be dealt with
12 in quite that way by the Board.

13 MR. COLBORNE: I think I understand what
14 you are saying, Mr. Chairman. So I will just ask a
15 quick question and I think I am going to get a fairly
16 quick answer, and I will ask it of Mr. Bisschop.

17 Q. Why was the type of forest management
18 that I have referred to a few minutes ago not included
19 as one of the alternatives?

20 MR. BISSCHOP: A. We didn't include it
21 as an 'alternative to', we see it as something that we
22 very much could address in the way we address timber
23 management at the level of forest management unit where
24 we do look at, and we will increasingly look at, I
25 would suggest, in the future, intensity of management

1 effort.

2 Q. Would that be mainly in the planning
3 area? Would I look to Panel 15, for instance, to see
4 examination of intensity -- various degrees of
5 intensity?

6 A. Well, Mr. Colborne, I think it's
7 inherent in much of our evidence, particularly for
8 example in the explanation of the alternative methods
9 for the various activities where we describe, for
10 example -- take the maintenance activity, where we
11 describe various levels of intensity of tending
12 treatments for example.

13 So we have addressed it in that way in
14 terms of the range of intensity through various
15 practices that's available for timber management and,
16 in the planning panel, Panel 15, we described how one
17 would decide on the various activities that would be
18 carried out and that would address the question of
19 intensity of management at a management unit level.

20 Q. Okay. I want to ask you about a
21 different alternative as 'alternative' is defined by
22 reference to the popular literature; and, that is, if
23 you read that literature very, very frequently there is
24 reference to the fact that in the United States a lot
25 of the forests, particularly in the east, are privately

1 owned and that has certain consequences which some
2 people think are positive and some think are negative,
3 but most of the popular writers seem to think it should
4 be looked at as an alternative.

5 So the same question; why didn't you look
6 at that?

7 A. We were dealing with Crown land in
8 this environmental assessment. I don't believe that we
9 have the option available to us to address the question
10 of whether or not that Crown land ought to be dispersed
11 to the private sector.

12 It's the Ministry's mandate to manage
13 Crown land. One of the uses it has made of Crown land
14 resources is use of the timber resource and we have
15 addressed use of the timber resource through this
16 environmental assessment. The whole question of
17 whether or not that land ought to be private land
18 versus Crown land, I don't think is something available
19 to us to address.

20 Q. Well, this is interesting. First of
21 all, would you agree that if it was no longer Crown
22 land, the Ministry of Natural Resources would no longer
23 have anything or very much to do with it?

24 A. Well, there would be some role.

25 Q. But much less.

1 A. The mandated responsibility would be
2 less, yes.

3 Q. Yes. In other words, a large number
4 of people who are presently involved with forest
5 management within MNR would not have jobs any more, the
6 work they are doing would be done by someone else?

7 A. If the land were private, yes.

8 Q. And did you consider 'alternatives
9 to' to exclude by definition any change in the fact of
10 Crown ownership of the land that you were looking at?

11 A. No.

12 Q. I thought that you just said that
13 alienation by the Crown to private ownership you
14 understood to be beyond the terms of what you were
15 doing?

16 A. Perhaps -- could you repeat the
17 original question? Perhaps I got confused in the
18 question, but I don't think I did.

19 We didn't consider any 'alternatives to'
20 that involved no role in management of Crown lands, as
21 I understand -- for no role for MNR in management of
22 Crown lands.

23 THE CHAIRMAN: Well, is it fair to say
24 you didn't assess or consider any 'alternatives to'
25 that did not involve other than ownership by the Crown

1 of Crown lands?

2 MR. BISSCHOP: Correct, Mr. Chairman,
3 that is how I understood the question.

4 MR. MARTEL: Aren't the private lands
5 excluded by some -- for example, lands held by various
6 landholders now are excluded?

7 MR. BISSCHOP: All private lands are
8 excluded from forest management units and any
9 activities on those private lands are not the subject
10 of this environmental assessment. We are dealing with
11 timber management activities on Crown lands in forest
12 management units.

13 MR. COLBORNE: Q. My question though,
14 sir, is: Did you think that in addressing
15 'alternatives to' you were constrained by the
16 definition of what is before the Board now for
17 assessment; in other words, an 'alternative to' could
18 not include anything that would take the forest estate
19 out of Crown ownership?

20 MR. BISSCHOP: A. Again, as I listen to
21 you I am getting a bit confused in terms of whether the
22 answer is yes or no, but just because of the way the
23 question is worded -- if you could repeat again, I will
24 try to give you the yes or no answer.

25 Q. When you were considering

1 'alternatives to', did you think that you could not
2 include anything that involved the lands in question
3 passing out of Crown ownership, that that was beyond
4 the pail as far as 'alternatives to' were concerned?

5 A. To use the words in your question,
6 yes, I thought I could not include any consideration of
7 the land ownership question.

8 Q. Fine.

9 THE CHAIRMAN: Mr. Colborne, I don't
10 know, but the Board is having some difficulty with this
11 line of questioning because if what is before the Board
12 is an undertaking concerning timber management with
13 respect to Crown lands, what utility is there in
14 looking at the impacts from that same land basis were
15 the ownership not in the Crown; and, therefore, as a
16 result of it not being in the Crown, the Crown would
17 not be responsible for or carry out the activities or
18 manage the activities, if I can put it that way?

19 MR. COLBORNE: Well, Mr. Chairman, maybe
20 this is getting a little too theoretical, but it seemed
21 to me that it might be that from a professional forest
22 and planning standpoint one could conclude that the
23 best way to manage the forest was for MNR to get out -
24 well, let's not put it that way - for the Crown to
25 cease management and to, in an organized way

1 presumably, turn over title to private landholders.

2 Let me give you an analogy. I have heard
3 it argued that from a planning and economist point of
4 view that is the correct answer with respect to what we
5 now call public housing. So if we are here talking
6 about 'alternatives to' maybe these professionals, if
7 asked - and I want to ask them the question now - maybe
8 they would say public management has been a disaster,
9 everybody knows that, so maybe the best thing is to
10 turn it over to someone who will say: This is my bush
11 and now I am going to make sure that everything is
12 going to be done right, and I won't give it away to my
13 political buddies, and I won't be making the kind of
14 mistakes that sometimes have been made for reasons of
15 political expediency and so on and so forth. Maybe
16 that's the sensible, professional answer. I would ask
17 the question.

18 THE CHAIRMAN: But isn't that something
19 to be developed by those in opposition who don't feel
20 it's properly managed by the Crown; is it not a little
21 much to expect the Crown which is seeking approval to
22 continue on with managing under a planning process
23 activities on lands which the Crown purportedly owns...

24 MR. COLBORNE: But are these witnesses
25 here to state Crown policy or are they here as

1 professional planners and foresters. I know it must be
2 a mix, to an extent, but on a question of what are the
3 valid 'alternatives to', surely it's the professional
4 foresters and planners we are talking to, not the
5 spokesmen for Crown policy.

6 THE CHAIRMAN: Well, one of the
7 alternatives they looked at supposedly is the nil
8 option, no management at all. Now, if what you are
9 saying is: Did you look at timber management carried
10 on by others as opposed to us; i.e., supposedly if the
11 ownership of the land were in the hands of others those
12 lands would be managed from a forestry perspective by
13 others not the Crown, if that is what you are saying, I
14 suppose the answer is: You probably didn't look at
15 that. The question then comes down to: Is that a
16 reasonable alternative to look at?

17 MR. COLBORNE: Thank you for assisting
18 me. I would like to ask those two questions.

19 THE CHAIRMAN: Well, you may feel it's
20 reasonable. In the present instance, the proponent did
21 not look at that option. I take it that is correct; is
22 that the case, Mr. Bisschop?

23 MR. BISSCHOP: Yes, we did not look at
24 that. We considered that option as simply not
25 available to us to consider, Mr. Chairman.

1 THE CHAIRMAN: But you did look at the
2 option of no management?

3 MR. BISSCHOP: That's correct.

4 THE CHAIRMAN: Which is basically the
5 private land rationale for the supply of wood, the
6 continuous supply of wood for industry from other than
7 Crown lands?

8 MR. BISSCHOP: Correct.

9 THE CHAIRMAN: And you looked at various
10 forms of management on the Crown lands with or without
11 the application of guidelines, et cetera, et cetera?

12 MR. BISSCHOP: That's correct.

13 THE CHAIRMAN: Okay. The one that you
14 are posing they did not look at.

15 MR. COLBORNE: And I want --

16 THE CHAIRMAN: And is it reasonable for
17 them to have looked at, that is the question.

18 MR. COLBORNE: I know they didn't look at
19 it now that I have heard those answers, but I want to
20 ask them if they think it is a reasonable alternative.

21 MR. MARTEL: Can I ask, Mr. Colborne, do
22 you think they could fly in the face of government
23 policy in such a Draconian way?

24 MR. COLBORNE: I think they'd have to if
25 any one of them disagrees with government policy.

1 MR. MARTEL: It is up to them to decide
2 what government policy is going to be, surely the Crown
3 establishes what its policy is going to be and you are
4 not going to fly off in a tangent and do something that
5 the Crown is quite radically opposed to; either that or
6 find yourself a new job. You are saying that in a
7 round-about-way as it is, but...

8 MR. COLBORNE: Well, nobody ever
9 suggested that one had to be entirely fair when one is
10 cross-examining, and this may put one in a bun, you
11 know, in a difficult situation from a point of view of
12 just giving a professional opinion. I don't know.

13 THE CHAIRMAN: Mr. Armson, do you feel
14 that that is a reasonable 'alternative to' that should
15 have been looked at?

16 MR. ARMSON: Well, if I might, Mr.
17 Chairman, I have been in the position as a professional
18 forester before I joined this Ministry of in fact
19 providing professional advice to a very large, in fact
20 the largest landowner in this country, forest land, and
21 that is on my CV.

22 And in advising him, and he owns millions
23 of acres, I was being asked by him in terms of what he
24 should do in terms of intensity, whether in fact it
25 should be a matter of simple exploitation, which is

1 really very similar to C in this case, or whether there
2 should be timber management in a very sophisticated
3 manner.

4 Never once would I as a professional
5 forester and rendering professional services to the
6 client, he didn't ask me whether he should sell the
7 land and it wasn't in my position to provide him with
8 that advice, I was providing advice about the aspects
9 of forestry, and I would say the same position now with
10 respect to, in this case, the landowner which is the
11 Crown land. They have decided that is their ownership.
12 It is within that context, therefore, that I provide
13 that advice, and I think that is the professional
14 answer I would give.

15 MR. MARTEL: But surely it's deeper than
16 that, because in fact the rest of the forest -- if you
17 were to talk about Crown ownership aceding it to
18 someone else, all of the other things people do out
19 there would be in jeopardy.

20 I mean, you know, you would have to have
21 negotiations how people can go fishing on a certain
22 body of water because in fact all the land surrounding
23 the water will be owned by one individual. How do you
24 get to it?

25 I mean, if one just looks at such a small

1 thing as putting locks on roads at one time, there's
2 almost total war out there. I mean, it boggles the
3 mind to suggest that one should look at an option of
4 turning all this Crown land over and then trying to
5 have a policy out there which is going to meet the
6 needs of all of the people of Ontario.

7 THE CHAIRMAN: Well, Mr. Colborne, I
8 don't know where we go from here other than to say that
9 we have reached the impasse, that the Ministry hasn't
10 done it, Mr. Armson has indicated that I think, you
11 don't feel it's reasonable to have done so; is that the
12 import of what you just said?

13 MR. ARMSON: Certainly, and I believe Mr.
14 Martel has stated it in very clear terms, because in
15 private land that is exactly what would happen.

16 THE CHAIRMAN: So I don't know that we
17 are going to get anywhere by pursuing it.

18 MR. COLBORNE: Very well.

19 THE CHAIRMAN: Because that isn't the de
20 facto situation, the Crown does in fact own the land
21 purportedly which is before us.

22 MR. COLBORNE: Okay.

23 Q. What about looking at an alternative
24 that had a more mixed governmental participation and
25 specifically less concentration on one ministry and a

1 more broad allocation of the decision-making process,
2 perhaps partially to the Ministry of the Environment
3 and so on and so forth, so there is more interplay,
4 less potential for bad decisions and for abuse?

5 THE CHAIRMAN: But, ivate land rationale
6 for the supply of wood, the continuous supply of wood
7 for industry from other than Crown lands?

8 MR. BISSCHOP: Correct.

9 THE CHAIRMAN: And you looked at various
10 forms of management on the Crown lands wiselves on a
11 regular basis to presumably provide better government.

12 But the way they have chosen to do it
13 surely is up to the government in power and the
14 administration in power at a particular point in time.
15 And even if this Ministry feels it should be dispersed
16 elsewhere, I would suggest to you that it is not up to
17 this Ministry to make those kinds of decisions. They
18 can provide advice to the Premier and the Premier may
19 or may not acede to those recommendations.

20 MR. COLBORNE: Yes. I will withdraw that
21 question. Thanks, Mr. Chairman.

22 I would like to say though that I still
23 think there is more that the witnesses have to give
24 than governmental policy, and there may be questions
25 here which overlap into their professional expertise,

1 but I will withdraw that question. I hear what you
2 have to say.

3 Q. Now, I think, Mr. Clark, you said
4 that the Ministry has noted a decline in native
5 employment in tree planting, and I think you said that
6 this seemed to be associated with a rise in the
7 proportion of tree planting done by private
8 contractors. That may be not exactly what you said.

9 MR. CLARK: A. Well, I think I indicated
10 that we had less direct involvement simply because more
11 of the tree planting was done by third party
12 contractors and by the industry themselves.

13 Q. But I thought you went on to say that
14 the information you had was that there was less native
15 employment in tree planting that was concurrent with
16 that?

17 A. That is our sense of it, although I
18 also pointed out that neither third party operators nor
19 the Ministry collects information that distinguishes
20 between native and non-native.

21 Q. Okay. That is your sense of it.
22 Now, is your sense of the connection and access from
23 native communities to government, as opposed to the
24 connection and access between native communities and
25 private industry, is your sense of that that the

1 connection is much more direct and intimate between
2 native communities and government than the other way
3 around?

4 A. I can't really say.

5 Q. You yourself have dealt with members
6 of the industry regularly; is that so?

7 A. To some extent, yes. Certainly in
8 previous jobs that I had, I did, yes.

9 Q. You said that you had the sense that
10 native employment in tree planting was declining, but I
11 guess you have now said that you don't really have any
12 particular data; is that correct?

13 A. Well, I pointed out that it's very
14 hard to get hard data simply because in collecting it
15 neither the government nor third party contractors
16 makes the -- distinguishes between natives and
17 non-natives, so that basically the best information I
18 can get is estimates from third party contractors, for
19 example, and from our field organization.

20 Q. And that is where you get this sense
21 that you described?

22 A. That's right.

23 Q. Okay. I want to ask a question
24 about -- excuse me a minute, I think this might have
25 been covered.

1 I want to ask some questions about the
2 null alternative. And the theory that lies behind
3 these questions, just so you understand, is that my
4 clients would be better off under the null alternative.

5 I stree that is a theory that may or may
6 not be true, you may or may not know that even at the
7 end of this hearing, but I want you to understand that
8 that's the theory because I know perfectly well that
9 you included the null alternative, not because you
10 thought that it was a good one, in fact you came out
11 and said that; you included it because it was a proper
12 'alternative to' to include.

13 And I want you to understand that my
14 questions are based on the theory that my clients would
15 be better off under the null alternative.

16 THE CHAIRMAN: Is that the evidence you
17 are going to put forward later in your own case?

18 MR. COLBORNE: Yes.

19 THE CHAIRMAN: Yes?

20 MR. COLBORNE: Yes.

21 Q. Now, if we could turn to page 38 of
22 the evidence, and here we are talking about aquatic
23 consequences of the null alternative. And it's
24 predicted that these would be very high -- excuse me,
25 that there would be a very high impact, and I am at the

1 last full paragraph on the page:

2 "That there would be a very high impact
3 on the aquatic environment if in effect
4 forest harvesting ceased."

5 And I understand that to mean that the
6 transition back to the pre-industry state would have a
7 very high effect on the aquatic environment. I am not
8 sure which of these witnesses prepared that paragraph
9 in the evidence, but my question would be directed to
10 that witness.

11 DR. ALLIN: A. That would be me.

12 Q. Yes. Have I characterized what this
13 paragraph says correctly in terms of the very high
14 impact?

15 A. Yes, specifically with respect to the
16 effects of changes in access as related to the lack of
17 maintenance of roads and allowing them to deteriorate
18 and become impassible.

19 Q. Right. So am I correct that the,
20 let's call it the reverse of that if you go back in
21 time would be that the adding of the roads, the putting
22 of the roads there in the first place had a "very high
23 effect on the aquatic environment" for the same reasons
24 that the deletion of the same roads would have a very
25 high effect on the aquatic environment?

1 A. No, that doesn't follow.

2 Q. Oh, why doesn't it follow?

3 A. The impact of road construction,
4 putting the roads there in the first place, would be a
5 smaller impact. The way to look at that is to look at
6 how we have rated those effects under timber
7 management.

8 So that, if I can just refer you back, I
9 think the best place to go is to Appendix A where there
10 is a little more detailed discussion of some of these
11 impacts. And on page 83 there is a discussion of
12 access impacts under timber management specifically.

13 And under access we indicate that the
14 impact is probably medium and that relates to the
15 usually short-term impact of increased fishing pressure
16 on roads that become newly accessed, a matter usually
17 of two, three, four years in which fishing pressure
18 increases substantially.

19 And there are some lakes, particularly
20 small lakes, which are sensitive to that kind of
21 increase in fishing pressure, and at least in some
22 cases there is a reduction in fish populations. So
23 that is the kind of effect that we are describing in
24 those paragraphs related to access.

25 Q. Well, I don't understand. So maybe I

1 could just ask, if I can - I'll frame one - a very
2 simple question, and let's just take one road.

3 If I understand page 38, the last
4 paragraph, you are saying that if you closed down that
5 road because nobody is going in there any longer to
6 harvest wood that you will have a very high effect on
7 the aquatic environment in the vicinity of that road,
8 primarily because nobody is using it, or it becomes
9 impassible after a while. That is what I understood
10 page 38 to mean.

11 A. No, really...

12 Q. Okay. Well, tell me what it does
13 mean?

14 A. Okay. The impact with respect to
15 alternative A is high basically because as roads
16 deteriorate and become impassible many lakes are, in
17 effect, going to be inaccessible by road, people who
18 fished them at one time presumably will want to
19 continue fishing and that -- the fishing pressure that
20 they have exerted in those areas will be shifted to
21 those lakes that remain accessible by road, and there
22 will be a fair number of those under alternative A as
23 we see it.

24 So it's that shift in fishing pressure
25 which we think could be quite considerable to, in

1 essence, a smaller number of lakes. People would be
2 putting the same amount of fishing pressure on a
3 smaller number of lakes and we think that would have a
4 very significant impact on fish populations in those
5 lakes.

6 Q. And the lakes that are no longer
7 accessible, if I understand what you said before, would
8 have less pressure on them but the change would not
9 necessarily be "very high"; is that what you are
10 saying?

11 A. Yes.

12 Q. I understand you now. Okay.

13 Now, at page 43 under terrestrial
14 environmental consequences, again of the null
15 alternative, the third bullet under the heading
16 alternative A it is stated that:

17 "If forest harvesting ceased hunting and
18 trapping pressures would be more
19 concentrated."

20 And if I understood your answer to the
21 last series of questions, that would have to do with
22 less access; am I right?

23 A. Yes. I will let Dr. Euler...

24 DR. EULER: A. Yes, that's correct.

25 Q. Okay. Has there been any examination

1 of any positive effects that would be felt by
2 communities which had good natural access because of
3 their locations and, therefore, a positive effect in
4 terms of the terrestrial environment for communities
5 which are not cut off by reason of closure of the
6 roads, for instance? Has that been looked at,
7 quantified, studied in any way?

8 A. I don't know of any studies that
9 measure that in a precise, quantitative way.

10 Q. And I guess the same question in
11 relation to the aquatic environment, Dr. Allin. We are
12 talking about these hypotheticals, but they really are
13 real, lakes that would have less fishing pressure if
14 the roads were closed?

15 DR. ALLIN: A. Yes. I don't know of any
16 detailed studies either.

17 Q. Thank you. I want to turn to page 46
18 and this has to do with the economic impacts, so
19 probably one of the other members of the panel deals
20 with this.

21 I just want to clarify the two points at
22 the top of the page. Now, am I right that the forest
23 industry produces revenue to the economy in general in
24 excess of a thousand million dollars per year, or at
25 least it did in 1984? Is that sort of a layman's way

1 of putting it?

2 MR. DUNCANSON: A. You could call it a
3 billion, too.

4 Q. Oh, that's good, that's good because
5 so many of us, including me, aren't sure when it's a
6 billion. Now I know. A thousand million is a billion?
7 Okay.

8 A. It was in '84.

9 THE CHAIRMAN: It's probably worth
10 500,000 today.

11 MR. COLBORNE: Q. Okay. So \$1-billion
12 in general revenue to the benefit of the overall
13 economy, but the governmental cost that must be offset
14 against that for managing the resource totalled
15 172-million, at least for Ontario; is that right, the
16 Ontario government?

17 MR. DUNCANSON: A. Yes.

18 Q. And if you wanted to get a total
19 government cost, you would have to factor in some
20 federal expenditure if there was some; is that right?

21 A. Ken, can you...

22 MR. ARMSON: A. I believe that the
23 figures that I quoted were the total expenditures
24 including, for example, in the past five years the, you
25 know, so-called goal for the Canada/Ontario funding.

1 Q. I didn't hear the last few words, I'm
2 sorry?

3 A. In the numbers that I quoted in my
4 direct evidence, that included the funding, the 50/50
5 funding that came from the provincial and federal
6 governments for that five-year period.

7 Q. I see. So if you look at it in that
8 manner, would you agree that the public forests, in
9 effect, earn over three quarters of a billion dollars a
10 year? There is no other expense associated with it,
11 they just grow and they belong to the public. So we
12 have got a billion dollars being generated, less than a
13 quarter billion being expended, a net profit, if you
14 will, of three quarters of a billion dollars?

15 THE CHAIRMAN: No, that's just on a
16 cashflow basis. The resource itself may be worth
17 considerably more, because you are not harvesting the
18 whole resource. There is a residual value, is there
19 not, Mr. Duncanson--

20 MR. DUNCANSON: Yes, there is.

21 THE CHAIRMAN: --of a forest sitting
22 there that has not been harvested?

23 MR. DUNCANSON: Yes, there is.

24 THE CHAIRMAN: And the wildlife and
25 fisheries, et cetera?

1 MR. DUNCANSON: That's correct.

2 THE CHAIRMAN: It is worth more than a
3 billion, I would suggest. If you go out there and
4 appraise what the forests are worth, they are worth
5 more than a billion.

6 MR. COLBORNE: Yes. I am talking purely
7 in a cashflow sense and I recognize that there are
8 other values, I also recognize that all the available
9 wood, or at least I accept what many people have said,
10 that all of the available wood is not cut, but given
11 those qualifications, there is sort of three quarters
12 of a billion dollars of extra cash in our collective
13 pockets, at least in 1984, as a result of the Crown
14 forests being harvested.

15 Q. Is that a fair summary?

16 MR. DUNCANSON: A. Yes.

17 Q. If you had stopped cutting on
18 December 30th, 1983 and started again on January 1st,
19 1985, we all collectively as Ontarions would have been
20 out of pocket three quarters of a billion dollars?

21 Now, we may have had a more valuable
22 resource to start out with in '85 and there may have
23 been other positive benefits, but just in terms of cash
24 in the collective pocket; is that right, three quarters
25 of a billion dollars?

1 A. That would be the difference, yes.

2 MR. MARTEL: Would you break the taxes
3 down? Can you break the taxes down as to what -- I
4 must say and confess, I looked at the industry's
5 material, that they included the taxes paid by them on
6 behalf of their employees.

7 Are you including it in that sense, or
8 taxes paid directly by the industry on behalf of the
9 industry as opposed to on behalf of their employees
10 from wages earned?

11 MR. DUNCANSON: I don't know if we have
12 that breakdown handy.

13 THE CHAIRMAN: It would include income
14 tax, we would suggest, from the wording of the top
15 paragraph on page 46 and its purported use.

16 MR. COLBORNE: For what it's worth, I was
17 reading the evidence as including the entire tax
18 contribution because I think it's fairly well known
19 that stumpage and so on doesn't bear much of a
20 relationship, if any, to the commercial value of a
21 piece of wood, and that is justified by the tax income,
22 tax revenues to the government.

23 Q. I would like to go on to page -- or
24 back to page 26. Excuse me, I think I have the wrong
25 page reference, if you will just bear with me for a

1 moment. That should have been page 50 of the evidence,
2 page 26 of the paper within the evidence, but page 50,
3 please. The last two paragraphs on that page.

4 And again here we are looking at the nil
5 alternative or the null alternative, and this time in a
6 socio-economic context. It is stated there that the
7 manufacturing base would collapse with certain job loss
8 consequences and so on.

9 Now, just from the point of view of
10 balancing the books, was there any look at positive or
11 at possible beneficial effects such as to communities
12 that would derive increased benefits as a result of
13 increased access to non-timber resources? What about
14 simply increased tourism benefits, let's use that as an
15 example?

16 MR. CLARK: A. Well, it's not stated
17 there, but certainly in some of the other evidence that
18 is presented concerning the various stakeholder groups
19 there is reference made to potential benefits that will
20 accrue as a result of the null hypothesis and tourism
21 is one that is noted, also potential benefits to other
22 users like naturalists, some cottagers and to some
23 extent native people has been referenced as well.

24 Q. The question is: Whether any effort
25 has been made to value that so we can say: Here is the

1 cost, it is so many dollars - I know you can't do these
2 things arithematically - but you can do them
3 conceptually by doing this, and here is the offsetting
4 cost by doing that. I am wondering if you looked at
5 the offsetting cost?

6 A. No, we didn't. At least -- I would
7 like to consult for a minute, if I could.

8 We knew to some extent what the job loss
9 would be in terms of the forest industry from the
10 evidence presented in Panel 5, but what we did not do
11 was indicate what the potential increase in jobs would
12 be as a result of potential -- of the benefits that
13 might accrue to various groups under that option.

14 Q. Why?

15 A. I guess we didn't think that it was
16 possible do it in a way that would be sufficiently
17 accurate to provide the kind of information you are
18 talking about.

19 I think what we were trying to avoid was
20 introducing figures that would be -- appear to have
21 accuracy but would be entirely speculative.

22 Q. Okay. Well, let's talk about things
23 that are hard to quantify. At page 51, the second
24 paragraph, there is reference to socio and economic
25 hardship if you shut the mills down, and so on and so

1 forth.

2 A. Yes.

3 Q. And I'm not questioning that that
4 would be a result. What I want to know is - and you
5 can't quantify hardships, so it has got nothing to do
6 with quantification - what about hardship caused to
7 communities by timber management; in other words, the
8 other side of the ledger again, whether it is access,
9 whether it's the harvest or anything else?

10 I couldn't see any reference in here to
11 non-quantifiable hardship caused by the alternative
12 that you were recommending.

13 A. Well, you may not accept my
14 explanation or our evidence to date, but the position
15 we have taken throughout our evidence is that we employ
16 a planning process and we employ a variety of tools,
17 for example, moose guidelines, tourism guidelines, fish
18 guidelines, in the future heritage guidelines which are
19 basically aimed at minimizing -- preventing, minimizing
20 or mitigating those effects, and in that sense we did
21 not go beyond addressing ourselves -- we did not
22 address ourselves to that particular concern.

23 Q. At page 60, again looking at the
24 effects of the null alternative, the last two
25 paragraphs on the page, you have even gone so far as

1 looking at anxiety in the event of the mills shutting
2 down.

3 Now, I'm not questioning for a second
4 that there would be such anxiety. I have lived in pulp
5 mill towns, there would be terrible anxiety if you shut
6 the forest industry down now, and that is about as
7 unquantifiable as one can get. And so the same
8 question: Why no anxiety looked at in terms of anxiety
9 caused by the actual forest management?

10 A. Well, I go back to the response I
11 provided earlier. In timber management, the mechanism
12 for dealing with that "anxiety" is the planning
13 process. When people have concerns, whether they be
14 native or non-natives of a particular kind, we have
15 attempted to define a planning process that allows them
16 to identify those concerns and a planning process that
17 provides for the development of alternatives and the
18 choice of a preferred alternative with a rationale
19 attached it it.

20 So, in effect, what I'm saying is when
21 people have anxiety about the potential effect of
22 timber management, we have suggested a mechanism for
23 dealing with that. We acknowledge the fact that
24 anxiety may be there.

25 Q. Sir, I have heard and reviewed most

1 of the evidence about the planning process and I'm
2 satisfied with what you've said. My question relates
3 more to -- not to how you have tried to accommodate
4 these concerns in your planning process, but to why you
5 didn't balance the presentation here to get both sides?

6 A. What you are probably suggesting then
7 is that in dealing with the option of timber management
8 we should have had a statement that suggested that
9 there would be anxiety on the part of some communities
10 associated or individuals associated with potential
11 effects that timber management activities might have.

12 Q. Well, I don't know if you would have
13 that statement or not. You wrote the evidence. What I
14 want to know is: Why you didn't have it. It is not
15 there.

16 Did you not have it because you thought
17 there would be none, did you not have it because it is
18 an unbalanced presentation, did you not have it because
19 you thought it was so insignificant it need not be
20 mentioned? Why is it not there, that's my question?

21 A. Well, it would certainly be far less
22 significant than I think the options that we are
23 contemplating where, for example, under the null
24 hypothesis we would be talking about very, very
25 significant dislocations in communities throughout the

1 area of the undertaking and for that particular reason
2 we highlighted it in that particular case.

3 Q. Are you aware of any instances where
4 timber management has resulted in community
5 instability, anxiety, dislocation, the type of
6 hardship, the kinds of things I have just been
7 mentioning?

8 A. I am trying to think of my own
9 firsthand knowledge first. I can certainly say that
10 there have been instances. I would reference the
11 possible mill closure of mills in Temagami which
12 obviously had a significant effect and I have no doubt
13 created considerable anxiety in that community.

14 Q. Was that part of timber management,
15 closing those mills?

16 A. Well, it certainly was, yes.

17 Q. Okay.

18 A. It had to do with the availability of
19 wood supply.

20 Q. I see. Go on.

21 A. I can think in terms of downturns
22 that have resulted in significant layoffs that
23 obviously have an effect on communities.

24 Q. Well, this is interesting because
25 when I was reading this I didn't see any reference

1 under the preferred alternative, the recommended
2 alternative of timber management, to the fact that
3 there are situations, as there clearly must be, where
4 timber management requires that the dial be turned down
5 or off, and this is what you are saying now, if I
6 understand you correctly.

7 A. Well, in defence of what we did
8 there, I think the point we made in advancing the
9 timber management option is that it will provide you
10 with the greatest opportunity, to use your analogy, to
11 control the level of the dial.

12 It provides the greatest opportunity for
13 ensuring that you have a continuous and predictable
14 supply of wood which is essential to maintaining
15 continuity and stability.

16 Q. But it is not perfect and there are
17 going to be times when you have to turn it off under
18 timber management; is that right?

19 A. Well, there is going to be times when
20 the market conditions may dictate that that will
21 happen, yes.

22 Q. Well, just a minute. You are the
23 government, you are not the industry. We will be
24 hearing from industry. They worry about the market;
25 right, you worry about the Crown forest and the

1 industry is part of one of the many factors you
2 balance, at least I hope that's the way it works.

3 So the market might dictate something,
4 but that doesn't dictate to you. I hope you are not
5 saying that. There might be reasons why, other than
6 market reasons, that enter into a forest management
7 decision?

8 A. Absolutely.

9 Q. One last -- well, almost one last
10 question. At page 62, now this has to do with hunting
11 and fishing and so on, so perhaps it is the gentleman
12 at this end of the table.

13 There is mention of the lifestyle in and
14 of the north including hunting and fishing, and do I
15 understand what the first paragraph on this page says
16 is that under the null alternative there will be less
17 hunting and fishing overall?

18 DR. EULER: A. There will be less
19 hunting, certainly.

20 Q. Okay. What about fishing?

21 DR. ALLIN: A. Yes, that would be true,
22 at least in those portions of the area of the
23 undertaking that were no longer accessible by road.

24 Q. And the reason there is because some
25 of those who are doing the hunting and fishing would

1 leave or they wouldn't be able to get to where they had
2 previously hunted and fished?

3 A. Yes, that's right.

4 Q. Now, this is the question: Does that
5 leave more hunting and fishing opportunities for those
6 who stay and do not have access problems, or is there a
7 factor here that doesn't meet my eye?

8 DR. EULER: A. Let me speak to hunting
9 and then Dr. Allin can speak to fishing. The problem
10 is you would have to reduce the overall level of
11 hunting because under the null alternative, first, the
12 populations of popular game animals would very likely
13 decrease, and not only that, they would be concentrated
14 in certain areas very likely.

15 And so if all the hunting then began to
16 concentrate on those game animals that were
17 concentrated in certain areas, in order to maintain the
18 levels, you would have to reduce the number of people
19 that could go hunting and that would reduce the overall
20 level of hunting.

21 Q. Okay. Well, these are the biology
22 factors really I guess, the wildlife biology factors
23 that I don't understand. But I am still not clear if
24 that has answered the question.

25 A person or a community that still has

1 the access because it is out there and it doesn't need
2 that road that is now shut down, does that person or
3 those people have more animals or less, or is it
4 unknown?

5 A. They would have less. In general
6 they would have fewer.

7 Q. And that's because -- if I understand
8 what you said correctly, is that because the harvesting
9 and so on that is done produces habitat which produces
10 more of these--

11 A. Game animals.

12 Q. --game animals?

13 A. Yes.

14 Q. Fine. Same question with respect to
15 fishing.

16 DR. ALLIN: A. I think the answer would
17 be a little different because the situation with
18 respect to the aquatic environment is basically
19 different than it is in terms of, say, wildlife, that
20 harvesting doesn't create fish habitat, for example.

21 So for those areas which become less
22 accessible to many people as a result of the roads
23 deteriorating, which I think is the area you are
24 referring to in your question, I could conceive of some
25 additional benefits to people who did in fact have

1 access to those areas, yes, because to the extent that
2 previous fishing pressure had been holding down fish
3 populations, presumably they would recover to some
4 extent, so the people who still had access to the area
5 might benefit.

6 Q. Thank you.

7 MR. COLBORNE: Mr. Chairman, I had quite
8 a number of questions to ask about the paragraph on
9 page 64 that Ms. Kleer spent some time with, and she
10 did that so thoroughly that I am finished.

11 Thank you.

12 THE CHAIRMAN: Thank you, Mr. Colborne.

13 MR. COLBORNE: Yes, I am finished with
14 this panel.

15 THE CHAIRMAN: Very well. According to
16 the Board's understanding, it is only the Ministry of
17 the Environment to go tomorrow in cross-examination and
18 then we are ready for the re-examination, and then we
19 will get on to the clearcut and possibly the AOC. A
20 lot can probably be covered tomorrow depending on how
21 long those elements take.

22 The panel might as well step down at this
23 point because we go on to the scoping exercise for
24 clearcut which won't take very long.

25 --- (Panel withdraws)

1 MR. FREIDIN: Mr. Chairman, I can advise
2 that Ministry of the Environment's estimate for
3 cross-examination on this panel is half an hour and our
4 estimate for re-examination is, at the outside, an hour
5 and a half.

6 THE CHAIRMAN: Okay. So that it is
7 likely reasonable, or is it likely that we will finish
8 the direct with respect to both the clearcut issue and
9 the AOC issue?

10 Ms. Murphy, there is only going to be --
11 we had the estimate earlier that you could probably
12 finish both issues in a day. If that still holds, then
13 given the hour that we may have to spend or hour and a
14 half in the morning to finish off with this panel, we
15 should complete that tomorrow; is that not the case?

16 MR. FREIDIN: We should complete...

17 THE CHAIRMAN: The direct of both the
18 clearcut and AOC matters?

19 MS. MURPHY: Excuse me, what time do you
20 start tomorrow?

21 THE CHAIRMAN: Well, normally we start at
22 8:30.

23 MS. MURPHY: Just to advise you, the one
24 practical difficulty we are going to have is that it's
25 going to take us some time to clear up for the clearcut

1 exercise. That doesn't mean that we can't get started
2 tomorrow, but at this point in time, just looking at
3 the materials, we are expecting it might take us to two
4 to two and a half hours to set up. We have a large
5 number of exhibits and maps and so forth to put up.

6 THE CHAIRMAN: Well, we are going to be
7 here for part of Wednesday anyways in terms of the
8 cross-examination, so I suppose we can allot some time
9 in the morning and perhaps just start a little later.

10 Could you set it up earlier in the
11 morning so that when we come to complete Panel 17 we
12 can go right on to clearcut, or do we have to take the
13 break for the two hours anyway?

14 In other words, if we started at say 9:30
15 tomorrow, would you be set up for the clearcut by that
16 time so that we could complete the Panel 17 and then go
17 right on to clearcut in the normal course of things, or
18 do we have to take that two-hour break in the middle?

19 MS. MURPHY: Well, I think maybe what we
20 could do is get as much done as possible by 9:30. I
21 don't know that we can be complete, we might need a
22 little bit more time before we start, but we can do as
23 much as possible before 9:30 if you want to start at
24 that time.

25 THE CHAIRMAN: All right.

1 MS. MURPHY: We certainly will tell you
2 around 9:30 how much more time we see is probably the
3 best...

4 THE CHAIRMAN: Well then, perhaps it
5 doesn't make that much sense to start at 8:30 tomorrow,
6 give you some time to set up at least part of it in the
7 morning. That means we can sleep in and you can.

8 Okay. With respect to the scoping, are
9 we ready for that now?

10 The Board has very little comment to make
11 on the scoping of the clearcut panel. It only has
12 essentially one question that we want some
13 clarification on, and that is with respect to page 68.
14 When you look at that table, which is the only place in
15 the evidence that gives the results, and going down the
16 left-hand column to the item that is labeled low
17 residuals, the Board wants to know essentially whether
18 these are left intentionally, the residuals, as a
19 result of wildlife management primarily or as a
20 byproduct of harvesting?

21 In other words, when you go through with
22 a clear cut and you leave something, or you go through
23 with some harvesting practice and you leave some
24 residuals, is that what you mean with the 10 per cent,
25 or is that with low residuals, or is that essentially a

1 result of the wildlife management practices?

2 Other than that, we don't have any
3 particular problem with the examples given in that
4 exercise, unless other parties do. I will call on the
5 other parties.

6 Ms. Seaborn, do you have any...?

7 MS. SEABORN: No comments, Mr. Chairman

8 THE CHAIRMAN: Ms. Kleer?

9 MS. KLEER: No comment.

10 THE CHAIRMAN: Mr. Cassidy?

11 MR. CASSIDY: (nodding negatively)

12 THE CHAIRMAN: And there is nobody else
13 that is going to be involved, and actually it's only
14 going to be Mr. Cassidy and Ms. Seaborn who are going
15 to be cross-examining on the clearcut issue.

16 MS. MURPHY: Yes, I understand that.

17 I do have one minor difficulty and I
18 would like to raise, and I hope I get an opportunity
19 tomorrow to talk to Ms. Swenarchuk to clear it up. My
20 difficulty was this, that I had anticipated that the
21 witness statement, particular paragraphs 1 to 7 which
22 simply are a summary - it starts on page 15 - those
23 first several paragraphs were intended to be a summary
24 of some facts that took place in preparing this
25 exercise, and I had anticipated that we would have

1 essentially agreement on those facts and that I would
2 not be in a position of to prove those facts that are
3 set out in paragraphs 1 to 7.

4 And from the statements of issues that we
5 have received from the Ministry of the Environment and
6 from the forest industry associations, it appears that
7 they either agree or have no difficulty with those.

8 My concern is that Ms. Swenarchuk's
9 letter, and she was involved, her client was involved
10 in those portions, did not indicate whether or not
11 there is agreement with those facts. What I am going
12 to attempt to do is contact her because it would be
13 unfortunate to have to prove, you know, and go through
14 those steps in evidence if it's not necessary and if we
15 can agree to those facts.

16 So I will be making that attempt tomorrow
17 morning, I suppose.

18 THE CHAIRMAN: Very well. That is
19 something for you to do; correct?

20 MS. MURPHY: Well, that is something for
21 me to try to do. I will see if I can get that
22 agreement, sir.

23 THE CHAIRMAN: Okay.

24 Ms. Kleer?

25 MS. KLEER: I am just a bit confused. To

1 be clear, we can expect that the people are going to be
2 crossing on the AOC process would potentially be doing
3 that tomorrow afternoon; is that right, sir?

4 THE CHAIRMAN: No. It is likely it will
5 take the whole day to put in the direct on both the
6 clearcut and the AOC material. We would then start the
7 cross-examination on Wednesday.

8 MS. KLEER: On Wednesday?

9 THE CHAIRMAN: That in effect means; does
10 it not, that we would not return here next Tuesday?

11 MR. FREIDIN: Well, if in fact we can
12 finish the cross-examination tomorrow and on Wednesday.

13 THE CHAIRMAN: And your re-examination.

14 MR. FREIDIN: And our re-examination,
15 that's correct.

16 THE CHAIRMAN: That's right.

17 MS. MURPHY: Possibly.

18 THE CHAIRMAN: But that would be the goal
19 supposedly, depending on how many parties want to
20 cross-examine.

21 MR. FREIDIN: Right. Well, based on the
22 assessment that we have in terms of length of time on
23 at least area of concern and -- well, my understanding
24 is that the estimates on cross-examination for
25 clearcuts, that is a distinct possibility that we can

1 finish the cross-examination and the re-examination on
2 everything on Wednesday.

3 THE CHAIRMAN: That's right.

4 MR. FREIDIN: So that our case would
5 complete on Wednesday, not next Tuesday.

6 THE CHAIRMAN: That's right. And then I
7 suppose we get into the question of when we will hear
8 the motion, and hear it in Toronto, and maybe we will
9 hear it on Tuesday.

10 MS. SEABORN: Mr. Chairman, just before
11 we get to that. If I understand what Ms. Murphy --

12 THE CHAIRMAN: Sorry.

13 MS. SEABORN: Sorry, Mr. Chairman. What
14 I understood Ms. Murphy to say was that we would start
15 tomorrow at 9:30.

16 THE CHAIRMAN: Yes.

17 MS. SEABORN: Is that correct? However,
18 I would be doing the cross-examination on Panel 17
19 followed by re-examination, and then we would get into
20 clearcut and the AOC

21 THE CHAIRMAN: The direct.

22 MS. SEABORN: The direct.

23 THE CHAIRMAN: Presumably we would finish
24 the direct tomorrow.

25 MS. SEABORN: That is what I was unclear

1 about, because it might be 11:00 or 12:00 before we
2 finished up Panel 17. But, Ms. Murphy, you still
3 anticipate finishing the direct examination if you have
4 half a day?

5 MS. MURPHY: I mean, the difficulty right
6 now is until we know what time we start, it's difficult
7 to say.

8 I doubt -- if we don't get started until
9 noon or whatever, and I don't know how long the area of
10 concern part will take, we might have to go over to
11 Wednesday to finish the evidence-in-chief. It's hard
12 to say at this point.

13 MR. MARTEL: That shouldn't make that
14 much difference because there is only, how many parties
15 cross-examining?

16 MS. MURPHY: Two.

17 MS. SEABORN: And Ms. Kleer though, that
18 is three parties.

19 THE CHAIRMAN: Well, there are two
20 cross-examining on the clearcut, and three are
21 cross-examining on the AOC; is that not correct?

22 MS. SEABORN: But I had understood that
23 one would cross-examine with respect to both issues at
24 the same time.

25 THE CHAIRMAN: That's right.

1 MR. CASSIDY: On both issues I am going
2 to be at the most an hour and a half and I am going to
3 try and even do less than that, if I can.

4 THE CHAIRMAN: Right. So we still, with
5 luck, should finish Wednesday, we think.

6 MR. FREIDIN: Any chances of sitting late
7 on Wednesday, if we have to, to finish?

8 THE CHAIRMAN: Yes. If we can sit late
9 and still get out, we will sit late.

10 ---Discussion off the record

11 THE CHAIRMAN: Okay. We are going to try
12 and organize this so we can get out Wednesday at a
13 reasonable hour, and if it means perhaps sitting an
14 extra hour tomorrow we may consider that, but let's
15 take it as we go.

16 But that will then -- okay, assuming that
17 we do complete your case, Mr. Freidin, by Wednesday,
18 assuming that is the case, then as far as the motion
19 goes for next week, we think we would still commence it
20 on Wednesday, carry over to the Thursday if necessary,
21 and the reason for that is that Mr. Martel has to be in
22 towards the end of the week anyways and there is no
23 sense leaving a day in the middle where he doesn't
24 necessarily have to be in Toronto.

25 So that is what we are going to attempt

1 to do, but we will see how it goes. And if worse comes
2 to worse, we will have to be up here next Tuesday.

3 Okay, thank you. We will adjourn until
4 9:30 a.m.

5 ---Whereupon the hearing adjourned at 5:50 p.m., to
6 be reconvened on Tuesday, January 23rd, 1990,
commencing at 9:30 a.m.

7 [copyright, 1985]

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

